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WHEN: Tuesday, September 15, 2009
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
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# Presidential Documents

Title 3—

The President

**Proclamation 8412 of September 4, 2009**

## National Preparedness Month, 2009

**By the President of the United States of America**

**A Proclamation**

Preparedness is an essential element of a resilient and secure Nation. My Administration has made preparedness a top priority, and we are working every day to ensure our country stands ready to respond to any disaster or emergency—from wildfires and hurricanes, to terrorist attacks and pandemic disease. Our goal is to ensure a more resilient Nation—one in which individuals, communities, and our economy can adapt to changing conditions as well as withstand and rapidly recover from disruption due to emergencies.

During National Preparedness Month, we underscore the responsibility of individuals, families, and communities—including the private and nonprofit sectors—to do their part before an emergency. I urge all Americans to take time to prepare an emergency supply kit and a family emergency plan, and to educate themselves about potential disasters. I also ask Americans to work within their own communities to coordinate emergency preparedness efforts. All Americans share this responsibility, and we must all work together to safeguard the Nation from harm.

The Federal Emergency Management Agency (FEMA) supports and promotes citizen education and grassroots preparedness efforts. FEMA's Ready Campaign provides simple and practical steps that all Americans can take to protect themselves, their families, and their neighbors. Additionally, the Citizen Corps educates, trains, and coordinates volunteer activities that help make our communities safer and better prepared for emergencies. I encourage all Americans to learn more at www.ready.gov and www.citizencorps.gov.

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 2009 as National Preparedness Month. I call upon the people of the United States to recognize the importance of preparing for potential emergencies beforehand and to observe this month with appropriate preparedness activities, events, and training to enhance our national resilience.

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. E9–22051
Filed 9–10–09; 8:45 am]
Billing code 3195–W9–P

# Rules and Regulations

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

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

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 248

**[FNS–2007–0008]**

**RIN 0584–AD74**

### WIC Farmers' Market Nutrition Program (FMNP): Nondiscretionary Provisions of Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This is an affirmation by the Department of an interim rule as a final rule, without change amending the WIC Farmers' Market Nutrition Program (FMNP) regulations to codify three FMNP nondiscretionary provisions mandated in the Child Nutrition and WIC Reauthorization Act of 2004. The three nondiscretionary provisions include the option to authorize roadside stands, a reduction in the required amount of State matching funds, and an increase in the maximum Federal benefit level. These changes are intended to increase State agency flexibility in managing the Program. The first two provisions became effective on October 1, 2004, while the increased maximum Federal FMNP benefit level was effective as of June 30, 2004.

**DATES:** Effective on October 13, 2009 the Department is adopting as a final rule the interim rule published at 73 FR 65246 on November 3, 2008.

**FOR FURTHER INFORMATION CONTACT:** Debra R. Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, VA 22302, (703) 305–2746, or *Debbie.Whitford@fns.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

The WIC Farmers' Market Nutrition Program: Nondiscretionary Provisions of Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004, was published on November 3, 2008, as an interim rule in the **Federal Register** (73 FR 65246). The rule provided a 60 day comment period that ended on January 2, 2009. No comment letters were submitted during the comment period. This interim rule amended the FMNP regulations to codify the three FMNP nondiscretionary provisions exactly as set forth in the Child Nutrition and WIC Reauthorization Act of 2004. The three nondiscretionary provisions include the option to authorize roadside stands, a reduction in the required amount of State matching funds, and an increase in the maximum Federal benefit level. These changes are intended to increase State agency flexibility in managing the Program.

Because the nondiscretionary provisions have been implemented as set forth in the law, they are retained as written in this final rule.

For reasons given in the interim rule, the Department is adopting the interim rule as a final rule without change.

This action also affirms information contained in the interim rule concerning Executive Order 12866, the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

**List of Subjects in 7 CFR Part 248**

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nondiscrimination, Nutrition education, Public assistance programs, WIC, Women.

### PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

■ Accordingly, the Department is adopting as a final rule, without change, the interim rule that amended 7 CFR part 248 and was published at 73 FR 65246 on November 3, 2008.

Dated: August 25, 2009.

**Julia Paradis,**

*Administrator, Food and Nutrition Service.*

[FR Doc. E9–21468 Filed 9–10–09; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### 7 CFR Part 760

**RIN 0560–AH94**

### Livestock Forage Disaster Program and Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish; Supplemental Agricultural Disaster Assistance

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements specific requirements for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) and the Livestock Forage Disaster Program (LFP) authorized by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). LFP provides payments to eligible livestock producers that have suffered livestock grazing losses due to qualifying drought or fire. For drought, the losses must have occurred on land that is native or improved pastureland with permanent vegetative cover or is planted to a crop planted specifically for grazing for covered livestock due to a qualifying drought during the normal grazing period for the county. For fire, LFP provides payments to eligible livestock producers that have suffered grazing losses on rangeland managed by a Federal agency if the eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a qualifying fire. ELAP provides emergency assistance to eligible producers of livestock, honeybees, and farm-raised fish that have losses due to disease, adverse weather, or other conditions, including losses due to blizzards and wildfires, as determined by the Secretary. ELAP assistance is for losses not covered under other Supplemental Agricultural Disaster Assistance Payment programs established by the 2008 Farm Bill, specifically LFP, Livestock Indemnity Program (LIP), and Supplemental

Revenue Assistance Program (SURE). Eligible LFP and ELAP losses must have occurred on or after January 1, 2008, and before October 1, 2011. This rule specifies how LFP and ELAP payments are calculated, what losses are eligible, and when producers may apply for payments.

**DATES:** *Effective Date:* September 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Scotty Abbott, Production, Emergencies, and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720–7997; e-mail *Scotty.Abbott@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

This final rule implements specific requirements for LFP and ELAP authorized by the 2008 Farm Bill (Pub. L. 110–246). Sections 12033 and 15101 of the 2008 Farm Bill authorize the Secretary of Agriculture (Secretary) to provide eligible livestock producers with payment for grazing losses during a calendar year for covered livestock due to a drought or due to fire on Federally managed lands, which is the scope of LFP. Sections 12033 and 15101 of the Farm Bill also authorize the Secretary to provide payments to producers of livestock, honeybees, and farm-raised fish to aid in the reduction of losses due to disease, adverse weather, or other conditions such as blizzards and wildfires. That is the scope of ELAP. ELAP covers some species, loss conditions, and losses that are not eligible for other disaster assistance programs, including colony collapse disorder and wildfires on non-Federal land. This preamble first discusses the background and general requirements that apply to both ELAP and LFP, then the specific requirements for each program.

The 2008 Farm Bill establishes a collection of permanent standing disaster assistance programs, ELAP and LFP among them, referred to as Supplemental Agricultural Disaster Assistance. These supplemental agricultural disaster assistance programs will be administered by FSA using funds from the Agricultural Disaster Relief Trust Fund (Trust Fund) established under section 902 of the Trade Act of 1974 (19 U.S.C. 2497a). The disaster assistance programs authorized by the 2008 Farm Bill are permanent or ''standing'' programs, that is, they are continuing programs not subject to annual appropriations that are similar in scope to the previous ad hoc programs.

The Supplemental Agricultural Disaster Assistance permanent disaster programs authorized by the 2008 Farm Bill include in addition to ELAP and LFP, LIP, SURE, and the Tree Assistance Program (TAP). This rule implements ELAP and LFP. LIP, SURE, and TAP are being implemented through separate rulemakings. The LIP final rule was published in the **Federal Register** on July 2, 2009 (74 FR 31567–31578). This final rule establishes the regulations for ELAP in 7 CFR part 760 subpart C and for LFP in subpart D.

These disaster programs that will be conducted under regulations in 7 CFR part 760 are provided for in two separate places in the 2008 Farm Bill. First, section 12033 adds, to cover these programs, a new section, 531, to the Federal Crop Insurance Act (7 U.S.C. 1531). Second, Section 15101 of the Farm Bill does the same by adding Section 902 of the 1974 Trade Act (7 U.S.C. 2497). The provisions of the two sections as enacted are identical except that the Trade Act of 1974 provisions contains the trust fund provisions. Since the Farm Bill, there have been some amendments to the programs and in some cases the amendments have been to one of the two relevant Farm Bill sections but not the other, but the two sections of the 2008 Farm Bill are considered to be interchangeable for the purposes of this rule and an amendment to one is, as a practical matter, an amendment to the other.

In the past, legislation provided disaster assistance through ad hoc programs to address the needs of specific areas or the results of specific disasters. Previous ad hoc disaster assistance programs included the Livestock Compensation Programs (LCP), which were implemented in the regulations in 7 CFR part 760, subparts K and L, and part 1416, subparts B and C, and were administered by FSA and the Commodity Credit Corporation (CCC), respectively, depending on the funding source. LCP provided payments to livestock owners and cash lessees for certain livestock feed losses, including grazing losses and feed costs. There was no ad hoc program that covered the full scope of the losses now potentially covered by ELAP; some losses now potentially covered by ELAP were covered by the previous Feed Indemnity Program.

## Terms Used in this Rule

This final rule uses the words ''producers'' and ''participants'' in substantive ways. ''Producers'' may apply for ELAP and LFP. ''Participants'' are those ''producers'' that meet the requirements to be eligible producers to receive ELAP or LFP payments.

Sections 12033 and 15101 of the 2008 Farm Bill use the words ''assistance,'' ''benefits,'' ''compensation,'' ''relief,'' and ''payments''. The form of ELAP or LFP assistance, benefit, relief, or compensation for eligible producers is a payment calculated as specified in this rule.

For LFP, sections 12033 and 15101 of the 2008 Farm Bill and this rule include the terms ''eligible livestock producer,'' ''covered livestock,'' and ''qualifying drought or fire.'' This rule also uses the terms ''qualifying grazing loss'' and ''qualifying grazing land.''

## General Eligibility Requirements That Apply to Both ELAP and LFP

This rule specifies the eligibility requirements for ELAP and LFP in part 760, subparts C and D. The LIP final rule revised subpart B of part 760 to provide the general eligibility requirements for all of the Supplemental Agricultural Disaster Assistance programs including ELAP, LFP, LIP, SURE, and TAP. Subpart B specifies administration of the programs, general requirements to be an eligible producer, risk management purchase requirements, buy-in waivers, equitable relief, payment limitations, and other generally applicable requirements. These general requirements that apply to all the standing disaster programs are described below.

## Payment Limits

The 2008 Farm Bill limits how much a producer may receive from FSA disaster assistance programs.

In applying payment limitation for 2008, no person, as defined and determined by the regulations in 7 CFR part 1400 in effect for 2008, may receive more than $100,000 total per crop year under ELAP, LFP, LIP, and SURE.

For 2009 through 2011, no person or legal entity (excluding a joint venture or general partnership), as defined and determined by the rules provided for in 7 CFR part 1400, may receive, directly or indirectly, more than $100,000 total per crop year under ELAP, LFP, LIP, and SURE.

For the payment limits, both indirect and direct benefits are counted by attribution. In the case of a legal entity, the same payment is attributed to the direct payee in the full amount and those that have an indirect interest to the amount of the interest. For example, under the attribution rules that applies to these programs, assume:

- Corporation A is in line to receive a $100,000 LFP payment,

• Corporation A is owned 50 percent by Individual A and 50 percent by Corporation B, and

• Corporation B is owned by Individual B with a 30 percent interest and by Individual C with a 70 percent interest.

If so, Corporation A, for payment limitation purposes would be considered to have received $100,000 and Individual C (who owns 70 percent of Corporation B, which owns half of Corporation A) would be considered to have indirectly benefitted by the amount of $35,000 (50 percent times 70 percent of the $100,000). Even though no part of the $100,000 was actually paid to Individual C, the amount of $35,000 would count against individual C's overall payment limitation from all sources and farms. Assume Individual C was already at the maximum payment limit, then Individual C would not have been eligible to receive $35,000; as a result, the payment to Corporation A would be reduced by $35,000.

The amount of any payment for which a participant may be eligible under any of these programs may be reduced by any amount received by the participant for the same or any similar loss from any Federal disaster assistance program. Producers can receive LFP payments for drought or fire, but not both for the same loss. In addition, a producer who receives SURE payments cannot receive payments for the same loss under LFP. A producer who receives LFP, LIP, or SURE payments cannot receive payments for the same loss under ELAP.

As reflected in the general provisions issued with LIP, there are certain average adjusted gross income limitations that apply. In applying the limitation on average adjusted gross income (AGI) for 2008, an individual or entity is ineligible for payment under ELAP or LFP if the individual's or entity's average AGI exceeds $2.5 million for 2005, 2006, and 2007 under the provisions in 7 CFR part 1400 in effect for 2008. For 2009 through 2011, the average AGI limitation provisions in 7 CFR part 1400 applicable to CCC commodity programs also apply to ELAP and LFP. Specifically, as specified in the 2008 Farm Bill, for 2009 through 2011, a person or legal entity with an average adjusted gross nonfarm income, as defined in 7 CFR 1400.3, that exceeds $500,000 for the relevant period will be not be eligible to receive payments under these programs. Likewise, if a person with an indirect interest in a legal entity has an average nonfarm AGI over $500,000, then the payment to the legal entity will be reduced as calculated based on the percent of interest in the legal entity receiving the payment. For example, continuing with the assumptions in the example above, if Individual B had an average AGI that was over the limit, then the payment to Corporation A will be reduced by 15 percent (Individual B's 30 percent interest in Corporation B times Corporation B's 50 percent interest in Corporation A).

The relevant AGI period for these programs is the 3 calendar years that precede the program year involved. For livestock losses, the program year is the calendar year of the loss of the livestock.

The regulations in 7 CFR 1400.105 specify how payments will be attributed and how far the attribution will go. Attribution will be tracked through four levels of ownership in legal entities. The 2008 Farm Bill removed the previous ''3 entity rule,'' so a person can now receive benefits attributed through an unlimited number of entities, subject to the payment limits and the rules of attribution described in this final rule and in 7 CFR part 1400. In addition to these limits, the 2008 Farm Bill imposes limitations of payments to foreign persons. Those limits are specified in the regulations in § 760.103 as issued with the LIP rules.

**Risk Management Purchase Requirement**

To be eligible for program payments under ELAP, eligible producers on a farm, as specified by the 2008 Farm Bill, must have purchased insurance for each insurable commodity, excluding grazing land; a few exceptions allowed by the 2008 Farm Bill are discussed later in this section. ''Insurable commodities'' are those for which a plan of insurance can be obtained from the USDA's Risk Management Agency (RMA) that makes coverage for crops available under the Federal Crop Insurance Act (FCIA). Benefits for ''noninsurable'' commodities are generally available through the Noninsured Crop Disaster Assistance Program (NAP) run by FSA. Except for grazing land, producers for ELAP must have obtained an RMA policy or plan of insurance or NAP coverage for all of their crops. For LFP, producers must have obtained an RMA policy or plan of insurance or NAP coverage for those grazing lands for which they seek benefits.

Producers who did not purchase required coverage are not eligible for benefits unless an exception applies. ''Socially disadvantaged farmers and ranchers,'' as well as ''limited resource farmers and ranchers,'' or ''beginning farmers or ranchers,'' are exempt. For the 2008 crop, persons who paid a certain buy-in fee were exempt from the purchase requirement if the buy-in fee was paid by September 16, 2008. By an amendment to the 2008 Farm Bill, Congress allowed a second buy-in enabling producers to buy in from February 17, 2009, up to May 18, 2009; however, if the buy-in occurred after the first deadline, or the waiver was not granted administratively through some form of equitable relief, the producer had to agree to buy crop insurance or NAP for the next year for the crops to which the buy-in applied. Also, there were special benefit calculation provisions for producers who made use of the second deadline. The buy-in fee was equal to the cost of the insurance or NAP coverage, but did not entitle the producer to insurance or NAP coverage. Further, an amendment allowed a 2009 crop buy-in for crops if the 2009 Federal Crop Insurance Corporation (FCIC) sales closing date was prior to August 14, 2008. The deadline for the 2009 crop buy-in was January 12, 2009. In addition to these provisions, section 531(g)(5) of the FCIA (and the corresponding provisions of the Trade Act of 1974) have some more general provisions allowing the Secretary discretion to grant equitable relief to persons with a lack of coverage. The buy-in fees were different for 2008 and 2009.

**Equitable Relief**

The Secretary may provide equitable relief on a case-by-case basis to eligible participants that are otherwise ineligible or unintentionally fail to meet the risk management purchase requirements specified in § 760.104 for one or more covered crops or livestock on the farm. The equitable relief provisions are specified in § 760.106, as issued with the LIP rule, and apply to all the Supplemental Agricultural Disaster Assistance programs. The granting of equitable relief is at the discretion of the Secretary and is not appealable.

**Miscellaneous**

As specified in 7 CFR part 760 subpart B, participants receiving ELAP and LFP payments must keep records and supporting documentation for 3 years following the end of the year in which the application for payment was filed. This discretionary recordkeeping requirement is consistent with other FSA rules and programs, as well as with previous similar disaster assistance programs.

As specified in 7 CFR part 760 subpart B, other restrictions apply to ELAP and LFP including, but not limited to, those pertaining to highly erodible land and wetland conservation provisions specified in 7 CFR part 12 (which limit eligibility for payments in cases where highly erodible land is

converted to cropland or is used without a conservation plan or where wetlands have been converted after the 1986 Farm Bill to crop use).

All livestock owners, contract growers, producers, livestock, honeybees, farm-raised fish, and losses must meet the eligibility requirements provided in this rule; false certifications can carry serious consequences. FSA will validate applications with random spot-checks.

**Specific Provisions for ELAP**

*Overview*

Sections 12033 and 15101 of the 2008 Farm Bill direct the Secretary to use up to $50 million per year from the Trust Fund to provide emergency relief to eligible producers of livestock, honeybees, and farm-raised fish. The emergency relief is intended to provide financial assistance to reduce the amount of losses due to disease, adverse weather, or other conditions, such as blizzards and wildfires as determined by the Secretary. ELAP covers losses that are not covered under LFP, LIP, or SURE. These provisions are statutory. The ELAP details in this rule on what kinds of livestock and other species are eligible, what types of losses are covered, acceptable documentation of loss, and the application process for payment, are discretionary provisions in the sense of not being specified in the statutory provisions enacted in the Farm Bill. FSA is implementing many of the ''discretionary'' provisions of ELAP in a manner consistent with the rules and polices used in implementing LFP or LIP and those used for previous ad hoc disaster assistance programs because those rules and policies are known to the public and to Congress and because they have worked well to apportion benefits for the types of losses involved in ELAP.

*Eligibility Requirements for ELAP*

The 2008 Farm Bill specified that ELAP is for losses due to ''disease, adverse weather, or other conditions, such as blizzards and wildfires, as determined by the Secretary.'' Under the rule, eligible adverse weather and eligible loss conditions include disease, adverse weather, and other conditions and will be determined by FSA's Deputy Administrator for Farm Programs (Deputy Administrator) on behalf of the Secretary. Determination of ELAP payment eligibility will be based on actual losses as determined by the Deputy Administrator due to eligible adverse weather or eligible loss conditions. These determinations are all subject to the availability of funds. In general, adverse weather includes, but is not limited to, events such as hurricanes, floods, blizzards, wildfires, extreme heat, and extreme cold. Adverse weather is a factor in eligibility for other disaster assistance programs; however, there are other conditions that result in significant losses to agricultural producers. ELAP is being implemented to fill in the gap and provide assistance under other conditions as the Deputy Administrator determines are appropriate. FSA will determine eligibility of livestock, honeybee, and farm-raised fish losses caused by eligible adverse weather or eligible loss conditions, for example, disease caused by adverse weather. Additional eligible adverse weather and other qualifying loss conditions will be specified, as needed, by the Deputy Administrator. Specific examples of currently known qualifying loss conditions are described below.

The eligibility requirements for ELAP include limits that go to: the type of producer, the type of loss, the cause of the loss, and the location of the loss. In general, adverse weather or other qualifying conditions, as determined by the Deputy Administrator, are conditions that cause damage that result in a financial loss to the producer or require the producer to incur additional expenses. ELAP is intended to provide broad coverage for losses not covered by other programs; at this time, nine different types of losses have been identified as examples and are explained in this section.

The location requirement for the loss is that the loss must have occurred in the county for which assistance is being provided; examples are included below. To distribute payments to participants, funds are first allocated to the counties and the loss must have occurred in the county that is providing the payment.

As stated above, producers of livestock, honeybees, and farm-raised fish are eligible for ELAP if they have losses due to adverse weather and other conditions such as blizzards and wildfires that are not covered under LFP, LIP, and SURE.

Livestock producers are eligible for ELAP if they have eligible grazing losses due to eligible adverse weather or eligible loss conditions, on eligible grazing lands that are physically located in a county that experienced such eligible adverse weather or eligible loss conditions. Eligible adverse weather and eligible loss conditions may include, but are not limited to, blizzards, floods, hurricanes, wildfires on non-Federal grazing lands, and tidal surges. Losses resulting from drought or wildfire on rangeland managed by a Federal agency are not eligible losses for ELAP because those losses will be covered by LFP.

Livestock producers of forage or feedstuffs intended as feed for the producer's livestock are eligible for ELAP if the feed was damaged or destroyed due to an eligible adverse weather or eligible loss condition and if the feed that was damaged or destroyed was physically located in a county that experienced the eligible adverse weather or eligible loss condition. Livestock producers are eligible for ELAP to cover a portion of the loss related to additional costs incurred for providing or transporting livestock feed to eligible livestock that is needed due to an eligible adverse weather or eligible loss condition. Specific examples of eligible losses for the additional costs of providing or transporting feed include, but are not limited to, costs associated with equipment costs for hay lifts or snow removal.

Livestock producers are eligible for ELAP to cover a portion of the loss related to the cost of purchasing additional livestock feed above normal quantities to maintain the eligible livestock due to an eligible adverse weather or eligible loss condition until additional livestock feed becomes available. To be eligible, the additional feed purchased above normal quantities must be feed that is fed to maintain the livestock in the county where the eligible adverse weather or eligible loss condition occurred. Eligible livestock for grazing and feed losses will be the same kinds and types of livestock that will be eligible for LFP.

Livestock producers are eligible for ELAP if they have losses due to livestock death in excess of normal mortality due to an eligible loss condition that is not an eligible adverse weather event under LIP. LIP covers livestock death losses due to adverse weather; therefore, ELAP covers livestock death losses due to other eligible loss conditions. For example, based on conditions at the time, the Deputy Administrator may determine that livestock deaths due to a specific catastrophic disease outbreak would be an eligible loss condition for ELAP, but those livestock deaths would not be eligible for LIP. Eligible livestock for death losses will be the same kinds and types of livestock eligible under LIP. Although the list of livestock eligible for LIP appears to be the same as the list for ELAP, the definitions are different. For example, for ELAP, the age of certain animals for losses other than death is relative to the beginning date of the eligible adverse weather or eligible loss condition and there are differences in the weights of certain animals if the loss

is for a death as opposed to another type of loss. Unlike some previous livestock-related programs, ELAP does not cover catfish or crawfish death losses because losses of that kind are covered by SURE, the Farm Bill prohibits duplicative payments and there is not a loss if it has been paid for under another program.

Honeybee or farm-raised fish producers are eligible for ELAP if they have losses of feed that was intended as feed for the honeybees or farm-raised fish. The feed must have been damaged or destroyed due to eligible adverse weather or eligible loss conditions including, but not limited to, an earthquake, flood, hurricane, tidal surge, tornado, volcanic eruption, or wildfires. To be eligible, the honeybee or farm-raised fish feed loss must have occurred in the county where the eligible adverse weather or loss condition occurred.

Honeybee producers are eligible for ELAP if they have honeybee colony or honeybee hive losses due to eligible adverse weather or eligible loss conditions including, but not limited to, colony collapse disorder, earthquakes, floods, hurricanes, tornadoes, and volcanic eruptions. To be eligible, the honeybee colony or honeybee hive loss must have occurred in the county where the eligible adverse weather or eligible loss condition occurred. In the case of colony collapse, the collapse must be certified or otherwise documented by a third party such as a registered entomologist, Cooperative Extension specialist, or Land Grant University.

Producers of farm-raised bait fish and game fish are eligible for ELAP if they have fish death losses due to eligible adverse weather or eligible loss conditions including, but not limited to, earthquake, floods, hurricanes, tidal surges, tornadoes, and volcanic eruptions. To be eligible, the farm-raised fish deaths must occur in the county where the eligible adverse weather or eligible loss condition occurs.

Livestock, honeybee, and farm-raised fish losses that are not related to eligible adverse weather or eligible loss conditions as determined by the Deputy Administrator are not covered by this rule.

*Applying for ELAP Payment*

There are two basic steps for a producer to obtain ELAP payments. One step is to file a notice of loss when there is a condition that does or could generate a claim because of a loss in grazing, feed, animal, or an eligible additional expense is incurred, as applicable, for eligible livestock, honey bees, and farm-raised fish due to eligible weather or loss conditions. The second part of the process is to file the application for benefits. Both steps can be performed simultaneously. As to the first step, producers must provide a notice of loss to the FSA county office within 30 days of when the loss was apparent, or within 30 days after the end of the calendar year in which the loss occurred, whichever comes first. Due to the timing of the implementation of this rule and the losses to which it will apply, producers who potentially had suffered an eligible loss during calendar year 2008 and in calendar year 2009 prior to this rule being published in the **Federal Register** must provide a notice of loss within 90 calendar days after this rule is published. As indicated, however, a notice of loss is one part of the application process; other documentation is required for a complete application for payment as described in this rule. The completed application and required documents must be submitted to the FSA county office no later than 30 calendar days after the end of the calendar year in which the loss occurred or, for 2008 losses, 90 calendar days after publication of this rule in the **Federal Register**.

The statute allows up to $50 million per year for the ELAP program. Since the funding level has a cap, FSA plans to accept applications on a calendar year basis, and issue payments by calendar year. If approval of all eligible applications in a calendar year would result in expenditures in excess of the amount available for that calendar year, FSA plans to prorate the available funds by a national factor to reduce the total expected payments to the amount available for the calendar year. The funding level cap for ELAP is $50 million ''per year,'' with a provision for carryover of funds, which is understood to allow unused cap authority in a particular year that was otherwise approved by the Secretary to be ''carried over'' and effectively increase the cap for a later year. However, payments will, by this rule, be accounted for by year and if a proration is needed because of the cap or because the Secretary has not approved the full cap amount or if payments go unpaid for whatever reason, the unpaid applications will not be carried forward. Otherwise, payments for one year could be so great as to reduce the availability of funds for future payments.

*ELAP Payment Calculations*

Payments for eligible livestock feed losses, not to exceed 90 days of costs for feed losses, that the producer incurred during the calendar year will be based on 60 percent of the producer's actual cost for:

(1) Replacing livestock feed that was intended for feed for the producer's eligible livestock that was damaged or destroyed due to an eligible adverse weather or eligible loss condition;

(2) The additional cost incurred for providing or transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition; or

(3) The additional cost of purchasing additional livestock feed above normal quantities to maintain the eligible livestock during an eligible adverse weather or eligible loss condition until additional feed becomes available.

Payments for grazing losses due to an eligible adverse weather or eligible loss condition other than drought or wildfires will be based on the lesser of 60 percent of:

(1) The total value of the feed cost for all covered livestock owned by the eligible livestock producer based on the number of days grazing was lost, not to exceed 90 days of daily feed cost for all eligible livestock or

(2) The total value of grazing lost for all eligible livestock based on the carrying capacity of the eligible grazing land for the number of grazing days lost, not to exceed 90 days of lost grazing.

Payments for grazing losses due to wildfires on non-Federal grazing lands will be based on 50 percent of the value of lost grazing based on the carrying capacity of the eligible grazing land, not to exceed 180 days of lost grazing.

Payments for livestock death losses due to eligible loss conditions will be based on 75 percent of the market value of the eligible livestock lost in excess of normal mortality. This is consistent with the payment calculation for LIP.

Payments for honeybee or farm-raised fish feed losses will be based on 60 percent of the producer's actual costs for feed that was intended as feed for the honeybees or farm-raised fish that was damaged or destroyed due to an eligible adverse weather or eligible loss condition.

Payments for honeybee colony or honeybee hive losses will be based on 60 percent of the producer's actual replacement cost for honeybee colonies or honeybee hives that were lost due to an eligible adverse weather or eligible loss condition.

Payments for producers of farm-raised game or sport fish who have losses due to fish death will be based on 60 percent of the producer's actual replacement cost of the game or sport fish that died as a direct result of an eligible adverse weather or eligible loss condition.

As stated above, any payments for these losses are limited so a producer will not receive duplicate payments

under any Federal disaster assistance program. However, other Federal payments, such as NAP payments, may be made in addition to the disaster assistance payments. Therefore, to ensure that a producer is not paid for more than the amount of losses, the ELAP program will cap assistance at 95 percent of maximum losses. Specifically, total ELAP assistance provided to a participant in any given year, together with any amount provided to the same participant for the same loss as a result of any Federal crop insurance program, NAP, or any other Federal disaster program, plus the value of the commodity that was not lost, will not exceed 95 percent of the value of the commodity in the absence of a loss, as estimated by FSA. This rule amends § 760.108(c) to specify the 95 percent cap for ELAP payments.

**Specific Provisions for LFP**

*Overview*

The 2008 Farm Bill directs the Secretary to use such sums as are necessary from the Trust Fund to compensate eligible livestock producers for eligible grazing losses on eligible grazing land for covered livestock due to a qualifying drought during the normal grazing period for the county, or grazing losses on rangeland managed by a Federal agency if the eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a qualifying fire, as determined by the Secretary, during the calendar year. The qualifying drought or fire must occur on or after January 1, 2008, but before October 1, 2011. All the provisions described in this paragraph, which are implemented in this rule, are statutory provisions. The payment rate, the minimum risk purchase requirement, the definition of ''covered livestock,'' and the definitions of ''qualifying drought'' or ''fire,'' are also statutory provisions.

The details in this rule on what kinds of additional livestock and other species are covered, acceptable documentation of loss, and the application process for payment, are discretionary provisions. Generally, FSA is implementing many of the discretionary provisions of LFP to be consistent with the rules and polices used in implementing ELAP and LIP and those used for previous ad hoc disaster assistance programs because those rules and policies are known to the public and to Congress and because they have worked well in the past to apportion payments for the type of loss involved in this program.

*Eligibility Requirements*

LFP payments and eligibilities will be calculated based on the type of covered livestock and grazing losses and the calculations will be made by FSA-approved categories. Covered livestock are specified in § 760.304 and include beef cattle, alpacas, buffalo, beefalo, dairy cattle, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, and swine for which the eligible livestock producer suffered a grazing loss due to a qualifying drought, or was prohibited from grazing on Federally managed rangeland due to a fire. The livestock must also be:

- During the 60 days prior to the beginning date of the qualifying drought or fire:
  - Owned, leased, purchased, the subject of a contract to purchase, or in the possession of an eligible contract grower and
  - Maintained for commercial use as part of a farming operation of the participant or
- During the current production year or one or both of the production years immediately preceding the current production year:
  - Sold or otherwise disposed of due to a qualifying drought and
  - Maintained for commercial use as part of a farming operation of the participant.

The definitions of the covered livestock in this rule are similar to those used in the previous LCP program, and those used in the ELAP program. Based on input from affected producers, alpacas, emus, and llamas were added to the list of previously covered livestock. Reduced payments are available for producers who sold or otherwise disposed of covered livestock due to qualifying drought in 1 or both of the 2 production years immediately preceding the current production year. Where the livestock is in the possession of a contract grower at the time of loss, only the contract grower will be eligible for payment. ''Contract growers'' under ELAP and LFP will only include producers, other than feedlots, whose income is dependent on the actual weight gain and survival of the livestock. The actual ''owner'' of the livestock will not be eligible.

Livestock used for recreational use, such as animals used for roping or pets, are not covered. Animals that were or would have been on a feedlot on the beginning date of the drought or fire are not covered. Yaks and ostriches are not covered. Cattle (including buffalo and beefalo) under 500 pounds on the beginning date of the qualifying drought or fire are not covered.

LFP is different from past ad hoc disaster programs that required a county to have had a Secretarial designation or Presidential declaration for producers in that county to receive payments.

Qualifying drought ratings are specified in this rule using the U.S. Drought Monitor (*http://www.drought.unl.edu/dm/monitor.html*) ratings of drought intensity. The U.S. Drought Monitor is the only such rating tool available; it is a widely recognized and objective source of drought information. It is specified in the 2008 Farm Bill as one of the eligibility ''triggers'' for LFP. A livestock producer may receive LFP payments for grazing losses due to drought on owned or leased grazing land or pastureland that is physically located in a county that is, during the normal grazing period for the specific type of grazing land or pastureland for the county, rated by the U.S. Drought Monitor as having a drought rating of D2 (severe drought), D3 (extreme drought), or D4 (exceptional drought) for a specified period. The payment amount an eligible producer may receive depends on the length and intensity of the qualifying drought as follows:

- For an amount equal to one monthly payment, the drought length and intensity must be at least a D2 (severe drought) intensity in any area of the county for 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland for the county.
- For an amount equal to two monthly payments, the drought length and intensity must be at least a D3 (extreme drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland.
- For an amount equal to three monthly payments, the drought length and intensity must be:
  - At least D3 (extreme drought) intensity in any area of the county for at least four weeks during the normal grazing period for the specific type of grazing land or pastureland for the county or
  - D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific grazing land or pastureland for the county.

Total LFP payments to an eligible livestock producer in a calendar year for eligible grazing losses due to qualifying drought will not exceed an amount equal to three monthly payments for the same livestock.

A livestock producer may receive LFP payments for a qualifying fire if the grazing loss occurs on rangeland

managed by a Federal agency and the eligible livestock producer is prohibited from grazing the normal permitted livestock on the rangeland due to fire. The payments will cover up to 180 days of grazing losses due to fire.

Any owner, cash or share lessee, or contract grower of livestock that rents or leases pastureland or grazing land owned by another person on a rate-of-gain basis is not considered an eligible livestock producer.

Grazing losses that are not related to qualifying drought or fire, as determined by the Secretary, are not eligible for LFP, but may be eligible for ELAP, which covers other adverse weather conditions. An eligible livestock producer may not receive LFP payments for grazing losses due to drought that occur on land used for haying or grazing under the Conservation Reserve Program (CRP).

*Applying for LFP Payment*

In general, the producer must provide a completed application for payment and required supporting documentation to the administrative FSA county office within 30 calendar days after the end of the calendar year in which the grazing loss occurred. Due to the timing of the implementation of this rule and the losses to which it will apply, producers who potentially had an eligible loss in calendar year 2008 will have 90 calendar days after this rule is published to provide the required documents for calendar year 2008 to the FSA county office.

*LFP Payment Calculation*

Producers are eligible for up to three monthly payments for grazing losses due to qualifying drought, depending on the intensity and duration of the drought, as described earlier. Each monthly payment for eligible grazing losses under LFP due to drought may not exceed 60 percent of the lesser of:

- The monthly feed cost for all covered livestock owned or leased by the eligible livestock producer as calculated in § 760.308(g) or
- The monthly feed cost calculated using the normal carrying capacity of the eligible grazing land of the eligible livestock producer as determined in § 760.308(j).

In the case of livestock that were sold or otherwise disposed of due to qualifying drought in 1 or both of the 2 production years immediately preceding the current production year, the payment rate is 80 percent of the monthly rate just described.

Producers are eligible for LFP payments for grazing losses due to qualifying fire for up to 180 days per calendar year of such losses. Payments for eligible grazing losses due to qualifying fire under LFP may not exceed 50 percent of the monthly feed cost, determined as specified in § 760.308(g), for the total number of livestock covered by the Federal lease of the eligible livestock producer for grazing losses that occur for not more than 180 days per calendar year. Payment for fire losses is calculated on a daily basis.

**Notice and Comment**

The 2008 Consolidated Security, Disaster Assistance, and Continuing Appropriations Act (Pub. L. 110–329) made section 1601(c)(2) of the 2008 Farm Bill applicable in implementing section 12033 of the 2008 Farm Bill. To the extent relevant, the exemption applies to the corresponding provision enacted in section 15101 since they are identical except for the provision for funding in section 15101 that does not appear at all in section 12033. Otherwise, the provisions of Public Law 110–329 would have no meaning. Therefore, these regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 1601(c)(2) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 553 of Title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

**Effective Date**

In making this final rule exempt from notice and comment through section 1601(c)(2) of the 2008 Farm Bill, using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule allows FSA to provide benefits to producers who suffered grazing, feed and livestock death losses caused by drought, fire, disease, adverse weather and other conditions. Therefore, to begin providing benefits to producers as soon as possible, this final rule is effective when filed for public inspection by the Office of the Federal Register.

**Executive Order 12866**

The Office of Management and Budget designated this rule as economically significant under Executive Order 12866 and has reviewed this rule. A cost benefit analysis was completed, is summarized below, and is available from the contact person listed above.

**Summary of Economic Impacts**

The ELAP program is likely to result in costs of the entire authorized $50 million per year each year, providing benefits of $50 million each year to producers of livestock, honeybees, and farm-raised fish. The benefits of the honeybee loss compensation aspect of the program could also include substantial indirect benefits to the agricultural sector as a whole, because honeybees pollinate more than $14 billion worth of fruits, vegetables, and other crops in the United States.

The honeybee portion of the program is expected to be the most expensive part of ELAP, due to losses resulting from colony collapse disorder. According to the USDA Agricultural Research Service, honeybee colony losses from colony collapse disorder were reported to be 31 percent in 2007, with surveys in 2008 indicating losses of about 36 percent. Those losses represent about twice the percentage of losses sustained during a typical winter. In other words, honeybee hives suffer about 18 percent depopulation in a normal winter, but losses of twice that percentage have occurred since colony collapse disorder was identified. The cost of honeybee hive rental has risen by $22 per honeybee hive in some East Coast states, and risen $80 per honeybee hive in California, due to a shortage of honeybees caused by colony collapse disorder. Assuming an average ELAP payment of $22 per honeybee hive for the 2.4 million honeybee hives in the United States in 2007 to compensate for the costs caused by colony collapse disorder implies additional costs of $52.8 million. This suggests that estimates for honeybee losses alone due to colony collapse disorder could easily exceed $50 million per year, particularly if losses in some states are significantly above $22 per honeybee hive.

The aquaculture portion of ELAP is expected to have average costs of about $6 million per year, based on costs of previous ad hoc hurricane relief programs, with significant variation in costs per year because adverse weather events that impact aquaculture are relatively infrequent.

The cost of the livestock portion of ELAP is likely to be of similar magnitude to the aquaculture portion, and will depend on relatively infrequent events such as floods and blizzards.

LFP is expected to cost about $409 million per year, providing the same amount in benefits to livestock producers. The indirect benefit of the

program is to reduce income variability of livestock producers due to drought and fire losses beyond their control.

The annual average expected costs for LFP were calculated using the payment amounts from the previous ad hoc LCP that covered the three years from 2005 to 2007, adjusted for the differences in the conditions under which LFP will operate. The projected costs were adjusted to reflect that the cost of feed corn differs significantly from 2005 to 2007, and that the previous program allowed eligible livestock producers to select the worst of three years to use as the basis for payment calculation. The higher cost of corn required an upward adjustment; not including the worst year provision required a downward adjustment.

Higher corn costs are expected to result in a payment rate 212 percent above the payment rate used in LCP. Multiplying the approved LCP payments of just under $340 million by 212 percent would imply a maximum expected annual cost for LFP of $720.8 million. However, annual average expected costs for LFP are likely to be significantly less than $720.8 million because $720.8 million is based on participants choosing the worst year as the basis for payment calculations.

Inspection of total emergency payments for all livestock-related disasters (including a small amount for tree assistance) since fiscal year 1999 indicates substantial variability in payments over time, ranging from as low as $3 million in 2007 to as high as $1.384 billion in 2008. The average amount of livestock-related disaster assistance from 1999 to 2006 was 13.55 percent of the amount expected to be paid in 2008 and provides a lower bound on the expected costs of LFP.

As a permanent disaster program, LFP is likely to generate costs substantially above 13.55 percent of the expected 2008 emergency assistance on average. Since past ad hoc programs required a threshold disaster loss before legislation was passed, some producers who had disasters may not have received assistance, which they would under permanent disaster legislation.

Therefore, the estimated cost for LFP was calculated by multiplying the maximum expected cost of $720.8 million by the midpoint of the range extending from 13.55 percent to 100 percent, or by 57 percent. Annual average expected costs are therefore determined to be $409 million ($720.8 million multiplied by 56.8 percent). Not including the worst year provision will reduce some of the variability in program payments for LFP as compared to previous programs.

The only alternatives for implementation of LFP were on what kinds of additional livestock and other species are covered, acceptable documentation of loss, and the application process for payment, which are discretionary provisions. Generally, FSA is implementing many of the discretionary provisions of LFP to be consistent with the rules and polices used in implementing ELAP and LIP and those used for previous ad hoc disaster assistance programs because those rules and policies are known to the public and to Congress and because they have worked well in the past to apportion payments for the type of loss involved in LFP.

Similarly, the only alternatives for implementation of ELAP were on what kinds of livestock and other species are eligible, what types of losses are covered, acceptable documentation of loss, and the application process for payment, which are discretionary provisions. FSA is implementing many of the discretionary provisions of ELAP to be consistent with the rules and polices used in implementing LFP or LIP and those used for previous ad hoc disaster assistance programs because those rules and policies are known to the public and to Congress and because they have worked well to apportion benefits for the types of losses involved in ELAP.

**Regulatory Flexibility Act**

This rule is not subject to the Regulatory Flexibility Act since FSA is not required to publish a notice of proposed rulemaking for this rule.

**Environmental Review**

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The LFP provisions required by the 2008 Farm Bill that are identified in this rule are non-discretionary in nature, solely providing financial assistance. Therefore, FSA has determined that provisions for further NEPA review do not apply to this rule. Therefore, no environmental assessment or environmental impact statement will be prepared.

**Executive Order 12372**

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988. This final rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

**Executive Order 13132**

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

**Executive Order 13175**

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.

**Unfunded Mandates**

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal government or the private sector. In addition, FSA was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Federal Assistance Programs**

This rule applies to the following Federal assistance programs that are not in the Catalog of Federal Domestic Assistance: ELAP and LFP.

**Paperwork Reduction Act**

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

**E-Government Act Compliance**

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other

information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule has been determined to be Major under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121) (SBREFA). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. FSA finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay assistance to the many people affected by the disasters addressed by this rule. Therefore, this rule is effective immediately.

**List of Subjects in 7 CFR Part 760**

Dairy products, Indemnity payments, Pesticide and pests, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 760 is amended as follows:

## PART 760—INDEMNITY PAYMENT PROGRAMS

■ 1. The authority citation for part 760 continues to read as follows:

**Authority:** 7 U.S.C. 4501, 7 U.S.C. 1531, 16 U.S.C. 3801, note, and 19 U.S.C. 2497; Title III, Pub. L. 109–234, 120 Stat. 474; and Title IX, Pub. L. 110–28, 121 Stat. 211.

### § 760.104 [Amended]

■ 2. Amend § 760.104(a)(1)(i) by removing the words ''forage crops'' and by adding, in their place, the words ''forage crops intended for grazing''.

■ 3. In § 760.108, add paragraphs (c)(1) and (c)(2) to read as follows:

### § 760.108 Payment limitation.

* * * * *

(c) * * *

(1) FSA will review ELAP payments after the funding factor as specified in § 760.208 is determined to be 100 percent. FSA will ensure that total ELAP payments provided to a participant in a year, together with any amount provided to the same participant for the same loss as a result of any Federal crop insurance program, the Noninsured Crop Disaster Assistance Program, or any other Federal disaster program, plus the value of the commodity that was not lost, is not more than 95 percent of the value of the commodity in the absence of the loss, as estimated by FSA.

(2) [Reserved]

■ 4. Add subpart C to part 760 to read as follows:

**Subpart C—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program**

Sec.
760.201 Applicability.
760.202 Definitions.
760.203 Eligible losses, adverse weather, and other loss conditions.
760.204 Eligible livestock, honeybees, and farm-raised fish.
760.205 Eligible producers, owners, and contract growers.
760.206 Notice of loss and application process.
760.207 Notice of loss and application period.
760.208 Availability of funds.
760.209 Livestock payment calculations.
760.210 Honeybee payment calculations.
760.211 Farm-raised fish payment calculations.

## Subpart C—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

### § 760.201 Applicability.

(a) This subpart establishes the terms and conditions under which the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) will be administered.

(b) Eligible producers of livestock, honeybees, and farm-raised fish will be compensated to reduce eligible losses that occurred in the calendar year for which the producer requests benefits. The eligible loss must have been a direct result of eligible adverse weather or eligible loss conditions as determined by the Deputy Administrator, including, but not limited to, blizzards, wildfires, disease, and insect infestation. ELAP does not cover losses that are covered under LFP, LIP, or SURE.

### § 760.202 Definitions.

The following definitions apply to this subpart and to the administration of ELAP. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

*Adult beef bull* means a male beef breed bovine animal that was used for breeding purposes that was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

*Adult beef cow* means a female beef breed bovine animal that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on or by the beginning date of the eligible adverse weather or eligible loss condition.

*Adult buffalo and beefalo bull* means a male animal of those breeds that was used for breeding purposes and was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

*Adult buffalo and beefalo cow* means a female animal of those breeds that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

*Adult dairy bull* means a male dairy breed bovine animal that was used primarily for breeding dairy cows and was at least 2 years old by the beginning date of the eligible adverse weather or eligible loss condition.

*Adult dairy cow* means a female bovine dairy breed animal used for the purpose of providing milk for human consumption that had delivered one or more offspring by the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

*Agricultural operation* means a farming operation.

*Application* means FSA form used to apply for either the emergency loss assistance for livestock or emergency loss assistance for farm-raised fish or honeybees.

*Aquatic species* means any species of aquatic organism grown as food for human consumption, fish raised as feed for fish that are consumed by humans, or ornamental fish propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment. Catfish and crawfish are both defined as aquatic species for ELAP. However, aquatic species do not include reptiles or amphibians.

*Bait fish* means small fish caught for use as bait to attract large predatory fish. For ELAP, it also must meet the definition of aquatic species and not be raised as food for fish; provided, however, that only bait fish produced in a controlled environment can generate claims under ELAP.

*Buck* means a male goat.

*Commercial use* means used in the operation of a business activity engaged

in as a means of livelihood for profit by the eligible producer.

*Contract* means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

*Controlled environment* means an environment in which everything that can practicably be controlled by the participant with structures, facilities, and growing media (including, but not limited to, water and nutrients) was in fact controlled by the participant at the time of the eligible adverse weather or eligible loss condition.

*County committee or county office* means the respective FSA committee or office.

*Deputy Administrator* or DAFP means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or the designee.

*Eligible adverse weather or eligible loss condition* means any disease, adverse weather, or other loss condition as determined by the Deputy Administrator. The eligible adverse weather or eligible loss condition would have resulted in agricultural losses not covered by other programs in this part for which the Deputy Administrator determines financial assistance needs to be provided to producers. The disease, adverse weather, or other conditions may include, but are not limited to, blizzards, wildfires, water shortages, and other factors. Specific eligible adverse weather and eligible loss conditions may vary based on the type of loss. Identification of eligible adverse weather and eligible loss conditions will include locations (National, State, or county-level) and start and end dates.

*Equine animal* means a domesticated horse, mule, or donkey.

*Ewe* means a female sheep.

*Farming operation* means a business enterprise engaged in producing agricultural products.

*Farm-raised fish* means any aquatic species that is propagated and reared in a controlled environment.

*FSA* means the Farm Service Agency.

*Game or sport fish* means fish pursued for sport by recreational anglers; provided, however, that only game or sport fish produced in a controlled environment can generate claims under ELAP.

*Goat* means a domesticated, ruminant mammal of the genus Capra, including Angora goats. Goats are further delineated into categories by sex (bucks and nannies) and age (kids).

*Kid* means a goat less than 1 year old.

*Lamb* means a sheep less than 1 year old.

*Livestock owner,* for death loss purposes, means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died due to an eligible adverse weather or eligible loss condition. For all other purposes of loss under ELAP, ''livestock owner'' means one having legal ownership of the livestock for which benefits are being requested during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition.

*Nanny* means a female goat.

*Non-adult beef cattle* means a beef breed bovine animal that does not meet the definition of adult beef cow or bull. Non-adult beef cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died. For a loss other than death, means a bovine animal less than 2 years old that that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

*Non-adult buffalo or beefalo* means an animal of those breeds that does not meet the definition of adult buffalo or beefalo cow or bull. Non-adult buffalo or beefalo are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time of death. For a loss other than death, means an animal of those breeds that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

*Non-adult dairy cattle* means a bovine dairy breed animal used for the purpose of providing milk for human consumption that does not meet the definition of adult dairy cow or bull. Non-adult dairy cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died. For a loss other than death, means a bovine dairy breed animal used for the purpose of providing milk for human consumption that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

*Normal grazing period,* with respect to a county, means the normal grazing period during the calendar year with respect to each specific type of grazing land or pastureland in the county.

*Normal mortality* means the numerical amount, computed by a percentage, as established for the area by the FSA State Committee, of expected livestock deaths, by category, that normally occur during a calendar year for a producer.

*Poultry* means domesticated chickens, turkeys, ducks, and geese. Poultry are further delineated into categories by sex, age, and purpose of production as determined by FSA.

*Ram* means a male sheep.

*Secretary* means the Secretary of Agriculture or a designee of the Secretary.

*Sheep* means a domesticated, ruminant mammal of the genus Ovis. Sheep are further defined by sex (rams and ewes) and age (lambs) for purposes of dividing into categories for loss calculations.

*State committee, State office, county committee, or county office* means the respective FSA committee or office.

*Swine* means a domesticated omnivorous pig, hog, or boar. Swine for purposes of dividing into categories for loss calculations are further delineated into categories by sex and weight as determined by FSA.

*United States* means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, and the District of Columbia.

**§ 760.203 Eligible losses, adverse weather, and other loss conditions.**

(a) An eligible loss covered under this subpart is a loss that an eligible producer or contract grower of livestock, honeybees, or farm-raised fish incurs due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, (including, but not limited to, blizzards and wildfires).

(b) A loss covered under LFP, LIP, or SURE is not eligible for ELAP.

(c) To be eligible, the loss must have occurred:

(1) During the calendar year for which payment is being requested and

(2) On or after January 1, 2008, and before October 1, 2011.

(d) For a livestock feed loss to be considered an eligible loss, the livestock feed loss must be one of the following:

(1) Loss of purchased forage or feedstuffs that was intended for use as feed for the participant's eligible livestock that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, flood, hurricane, tidal surge, tornado, volcanic eruption, wildfire on non-Federal land, or lightning;

(2) Loss of mechanically harvested forage or feedstuffs intended for use as feed for the participant's eligible livestock that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must have occurred after harvest due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, flood, hurricane, tidal surge, tornado, volcanic eruption, wildfire on non-Federal land, or lightning;

(3) A loss resulting from the additional cost incurred for providing or transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator, including, but not limited to, costs associated with equipment rental fees for hay lifts and snow removal. The additional costs incurred must have been incurred for losses suffered in the county where the eligible adverse weather or eligible loss condition occurred;

(4) A loss resulting from the additional cost of purchasing additional livestock feed, above normal quantities, required to maintain the eligible livestock during an eligible adverse weather or eligible loss condition, until additional livestock feed becomes available, as determined by the Deputy Administrator. To be eligible, the additional feed purchased above normal quantities must be feed that is fed to maintain livestock in the county where the eligible adverse weather or eligible loss condition occurred.

(e) For a grazing loss to be considered eligible, the grazing loss must have been incurred on eligible grazing lands physically located in the county where the eligible adverse weather or eligible loss condition occurred. The grazing loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, flood, freeze, hurricane, hail, tidal surge, volcanic eruption, and wildfire on non-Federal land. The grazing loss will not be eligible if it is due to an adverse weather condition covered by LFP as specified in subpart D, such as drought or wildfire on federally managed land where the producer is prohibited by the Federal agency from grazing the normally permitted livestock on the managed rangeland due to a fire.

(f) For a loss due to livestock death to be considered eligible, the livestock death must have occurred in the county where the eligible loss condition occurred. The livestock death must be due to an eligible loss condition determined as eligible by the Deputy Administrator and not related to an eligible adverse weather event as specified in Subpart E for LIP.

(g) For honeybee or farm-raised fish feed losses to be considered eligible, the honeybee or farm-raised fish feed producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The honeybee or farm-raised fish feed losses must be for feed that was intended as feed for the honeybees or farm-raised fish that was damaged or destroyed due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, earthquake, excessive wind, flood, hurricane, tidal surge, tornado, volcanic eruption, and wildfire.

(h) For honeybee colony or honeybee hive losses to be considered eligible, the honeybee colony or honeybee hive producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The honeybee colony or honeybee hive losses must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, earthquake, excessive wind, flood, hurricane, tornado, volcanic eruption, and wildfire. To be eligible for a loss of honeybees due to colony collapse disorder, the eligible honeybee producer must provide documentation to support that the loss was due to colony collapse disorder. Acceptable documentation includes, but is not limited to, a colony collapse certification by a registered entomologist, Cooperative Extension specialist, or Land Grant University.

(i) For a death loss for bait fish or game fish to be considered eligible, the producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The bait fish or game fish death must be due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator including, but not limited to, an earthquake, flood, hurricane, tidal surge, tornado, and volcanic eruption.

**§ 760.204 Eligible livestock, honeybees, and farm-raised fish.**

(a) To be considered eligible livestock for livestock feed losses and grazing losses, livestock must meet all the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, adult or non-adult beef cattle, adult or non-adult buffalo, adult or non-adult beefalo, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine;

(2) Be livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county;

(3) Be livestock that is owned, cash-leased, purchased, under contract for purchase, or been raised by a contract grower or an eligible livestock producer, during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition;

(4) Be livestock that has been maintained for commercial use as part of the producer's farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(5) Be livestock that has not been produced and maintained for reasons other than commercial use as part of a farming operation; and

(6) Be livestock that was not in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by the Deputy Administrator.

(b) The eligible livestock types for feed losses and grazing losses are:

(1) Adult beef cows or bulls,

(2) Adult buffalo or beefalo cows or bulls,

(3) Adult dairy cows or bulls,

(4) Alpacas,

(5) Deer,

(6) Elk,

(7) Emus,

(8) Equine,

(9) Goats,

(10) Llamas,

(11) Non-adult beef cattle,

(12) Non-adult buffalo or beefalo,

(13) Non-adult dairy cattle,

(14) Poultry,

(15) Reindeer,

(16) Sheep, and

(17) Swine;

(c) Ineligible livestock for feed losses and grazing losses include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by FSA;

(2) Yaks;

(3) Ostriches;

(4) All beef and dairy cattle, and buffalo and beefalo that weighed less

than 500 pounds on the beginning date of the eligible adverse weather or eligible loss condition;

(5) Any wild free roaming livestock, including horses and deer;

(6) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained exclusively for recreational purposes, such as:

(i) Roping,

(ii) Hunting,

(iii) Show,

(iv) Pleasure,

(v) Use as pets, or

(vi) Consumption by owner.

(d) For death losses for livestock owners to be eligible, the livestock must meet all of the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, beef cattle, beefalo, buffalo, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine, and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

(i) Adult beef bulls;

(ii) Adult beef cows;

(iii) Adult buffalo or beefalo bulls;

(iv) Adult buffalo or beefalo cows;

(v) Adult dairy bulls;

(vi) Adult dairy cows;

(vii) Alpacas;

(viii) Chickens, broilers, pullets;

(ix) Chickens, chicks;

(x) Chickens, layers, roasters;

(xi) Deer;

(xii) Ducks;

(xiii) Ducks, ducklings;

(xiv) Elk;

(xv) Emus;

(xvi) Equine;

(xvii) Geese, goose;

(xviii) Geese, gosling;

(xix) Goats, bucks;

(xx) Goats, nannies;

(xxi) Goats, kids;

(xxii) Llamas;

(xxiii) Non-adult beef cattle;

(xxiv) Non-adult buffalo or beefalo;

(xxv) Non-adult dairy cattle;

(xxvi) Reindeer;

(xxvii) Sheep, ewes;

(xxviii) Sheep, lambs;

(xxix) Sheep, rams;

(xxx) Swine, feeder pigs under 50 pounds;

(xxxi) Swine, sows, boars, barrows, gilts 50 to 150 pounds;

(xxxii) Swine, sows, boars, barrows, gilts over 150 pounds;

(xxxiii) Turkeys, poults; and

(xxxiv) Turkeys, toms, fryers, and roasters.

(e) Under ELAP, ''contract growers'' will only be deemed to include producers of livestock, other than feedlots, whose income is dependent on the actual weight gain and survival of the livestock. For death losses for contract growers to be eligible, the livestock must meet all of the following conditions:

(1) Be poultry or swine, as defined in § 760.202, and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each contract grower with respect to each category:

(i) Chickens, broilers, pullets;

(ii) Chickens, layers, roasters;

(iii) Geese, goose;

(iv) Swine, boars, sows;

(v) Swine, feeder pigs;

(vi) Swine, lightweight barrows, gilts;

(vii) Swine, sows, boars, barrows, gilts; and

(viii) Turkeys, toms, fryers, and roasters.

(f) For livestock death losses to be considered eligible livestock for the purpose of generating payments under this subpart, livestock must meet all of the following conditions:

(1) They must have died as a direct result of an eligible loss condition:

(i) On or after the beginning date of the eligible loss condition; and

(ii) No later than 60 calendar days from the ending date of the eligible loss condition; and

(iii) On or after January 1, 2008, and before October 1, 2011; and

(iv) In the calendar year for which payment is being requested; and

(2) Been maintained for commercial use as part of a farming operation on the day the livestock died; and

(3) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, such non-eligible uses being understood to include, but not be limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

(g) For honeybee losses to be eligible, the honeybee colony must meet the following conditions:

(1) Been maintained for the purpose of producing honey or pollination for commercial use in a farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(2) Been physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition;

(3) Been a honeybee colony in which the participant has a risk in the honey production or pollination farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(4) Been a honeybee colony for which the producer had an eligible loss of a honeybee colony, honeybee hive, or honeybee feed; the feed must have been intended as feed for honeybees.

(h) For fish to be eligible to generate payments under ELAP, the fish must be produced in a controlled environment so to be considered ''farm raised fish'' as defined in this subpart, and the farm-raised fish must:

(1) For feed losses:

(i) Be an aquatic species that is propagated and reared in a controlled environment;

(ii) Be maintained and harvested for commercial use as part of a farming operation; and

(iii) Be physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

(2) For death losses:

(i) Be bait fish or game fish that are propagated and reared in a controlled environment;

(ii) Been maintained for commercial use as part of a farming operation; and

(iii) Been physically located in the county where the eligible loss adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

**§ 760.205 Eligible producers, owners, and contract growers.**

(a) To be considered an eligible livestock producer for livestock feed losses and to receive payments, the participant must have owned, cash-leased, purchased, entered into a contract to purchase, or been a contract grower of eligible livestock during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition and must have had a loss that is determined to be eligible as specified in § 760.203(d), and the producer's eligible livestock must have been livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county as specified in paragraph (b)(1)(i) or (ii) of this section.

(b) To be considered an eligible livestock producer for grazing losses

and to receive payments, the participant must have:

(1) Owned, cash-leased, purchased, entered into a contract to purchase, or been a contract grower of eligible livestock during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition, must have had a loss that is determined to be eligible as specified in § 760.203(e), and the loss must have occurred on land that is:

(i) Native or improved pastureland with permanent vegetative cover or

(ii) Planted to a crop planted specifically for the purpose of providing grazing for covered livestock;

(2) Have had eligible livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county as specified in paragraph (b)(1)(i) or (ii) of this section;

(3) Provided for the eligible livestock pastureland or grazing land, including cash leased pastureland or grazing land for covered livestock that is physically located in the county where the eligible adverse weather or loss condition occurred during the normal grazing period for the county.

(c) For livestock death losses to be eligible the producer must have had a loss that is determined to be eligible as specified in § 760.203(f) and in addition to other eligibility rules that may apply to be eligible as a:

(1) Livestock owner for the payment with respect to the death of an animal under this subpart, the applicant must have had legal ownership of the livestock on the day the livestock died and under conditions in which no contract grower could have been eligible for ELAP payment with respect to the animal. Eligible types of animal categories for which losses can be calculated for an owner are specified in § 760.204(d).

(2) Contract grower for ELAP payment with respect to the death of an animal, the animal must be in one of the categories specified in § 760.204(e), and the contract grower must have had:

(i) A written agreement with the owner of eligible livestock setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock;

(ii) Control of the eligible livestock on the day the livestock died; and

(iii) A risk of loss in the animal.

(d) To be considered an eligible honeybee producer, a participant must have an interest and risk in an eligible honeybee colony, as specified in § 760.204(g), for the purpose of producing honey or pollination for commercial use as part of a farming operation and must have had a loss that is determined to be eligible as specified in § 760.203(g) or (h).

(e) To be considered an eligible farm-raised fish producer for feed loss purposes, the participant must have produced eligible farm-raised fish, as specified in § 760.204(h)(1), with the intent to harvest for commercial use as part of a farming operation and must have had a loss that is determined to be eligible as specified in § 760.203(g);

(f) A producer seeking payments must not be ineligible under the restrictions applicable to foreign persons contained in § 760.103(b) and must meet all other requirements of subpart B and other applicable USDA regulations.

**§ 760.206 Notice of loss and application process.**

(a) To apply for ELAP, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses must submit, to the FSA administrative county office that maintains the participant's farm records for the agricultural operation, the following:

(1) A notice of loss to FSA as specified in § 760.207(a),

(2) A completed application as specified in § 760.207(b) for one or both of the following:

(i) For livestock feed, grazing and death losses, the participant must submit a completed Emergency Loss Assistance for Livestock Application;

(ii) For honeybee feed, honeybee colony, honeybee hive, or farm-raised fish feed or death losses, the participant must submit a completed Emergency Loss Assistance for Farm-Raised Fish or Honeybees Application;

(3) A report of acreage;

(4) A copy of the participant's grower contract, if the participant is a contract grower; and

(5) Other supporting documents required for FSA to determine eligibility of the participant, livestock, and loss.

(b) For livestock, honeybee, or farm-raised fish feed losses, participant must provide verifiable documentation of:

(1) Purchased feed intended as feed for livestock, honeybees, or farm-raised fish that was lost, or additional feed purchased above normal quantities to sustain livestock, honeybees, and farm-raised fish for a short period of time until additional feed becomes available, due to an eligible adverse weather or eligible loss condition. To be considered acceptable documentation, the participant must provide original feed receipts and each feed receipt must include the date of feed purchase, name, address, and telephone number of feed vendor, type and quantity of feed purchased, cost of feed purchased, and signature of feed vendor if the vendor does not have a license to conduct this type of transaction.

(2) Harvested feed intended as feed for livestock, honeybees, or farm-raised fish that was lost due to an eligible adverse weather or eligible loss condition. Documentation may include, but is not limited to, weight tickets, truck scale tickets, contemporaneous diaries used to verify that the crop was stored with the intent to feed the crop to livestock, honeybees, or farm-raised fish, and custom harvest documents that clearly identify the amount of feed produced from the applicable acreage. Documentation must clearly identify the acreage from which the feed was produced.

(c) For eligible honeybee colony and honeybee hive losses and eligible farm-raised fish losses, the participant must also provide documentation of inventory on the beginning date of the eligible adverse weather or loss condition and the ending inventory. Documentation may include, but is not limited to, any combination of the following:

(1) A report of acreage,

(2) Loan records,

(3) Private insurance documents,

(4) Property tax records,

(5) Sales and purchase receipts,

(6) State colony registration documentation, and

(7) Chattel inspections.

(d) For the loss of honeybee colonies and honeybee hives due to colony collapse disorder, the participant must also provide documentation or certification that the loss of the honeybee colony or honeybee hive was due to colony collapse disorder from an appropriate third party, as determined by the Deputy Administrator, such as from a registered entomologist, Cooperative Extension specialist, or Land Grant University.

(e) For livestock death losses, the participant must provide evidence of loss, current physical location of livestock in inventory, and physical location of claimed livestock at the time of death. The participant must provide:

(1) Documentation listing the quantity and kind of livestock that died as a direct result of the eligible loss condition during the calendar year for which payment is being requested, which must include: Purchase records, veterinarian records, bank or other loan papers, rendering truck receipts, Federal Emergency Management Agency records, National Guard records, written contracts, production records, Internal Revenue Service records, property tax

records, private insurance documents, or other similar verifiable documents as determined by FSA.

(2) Adequate proof that the death of the eligible livestock occurred as a direct result of an eligible loss condition in the calendar year for which payment is requested.

(3) If adequate verifiable proof of death documentation is not available, the participant must provide reliable records, in conjunction with verifiable beginning and ending inventory records, as proof of death. Reliable records may include: Contemporaneous producer records, dairy herd improvement records, brand inspection records, vaccination records, pictures, and other similar reliable documents, as determined by FSA.

(4) Certification of livestock deaths by third parties will be acceptable for eligibility determination only if verifiable proof of death records or reliable proof of death records in conjunction with verifiable beginning and ending inventory records are not available and both of the following conditions are met:

(i) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(A) That there is no other verifiable or reliable documentation of death available;

(B) The number of livestock, by category as determined by FSA, was in inventory at the time the applicable loss condition occurred;

(C) The physical location of the livestock, by category, in inventory when the deaths occurred; and

(D) Any other details required for FSA to determine the certification acceptable; and

(ii) The third party is an independent source who is not affiliated with the farming operation such as a hired hand and is not a ''family member,'' defined as a person to whom a member in the farming operation or their spouse is related as a lineal ancestor, lineal descendant, sibling, spouse, or otherwise by marriage, and provides their telephone number, address, and a written statement containing specific details about:

(A) Their knowledge of the livestock deaths;

(B) Their affiliation with the livestock owner;

(C) The accuracy of the deaths claimed by the livestock owner or contract grower including, but not limited to, the number and kind or type of the participant's livestock that died because of the eligible loss condition; and

(D) Any other information required for FSA to determine the certification acceptable.

(f) FSA will use the data furnished by the participant and the third party to determine eligibility for program payment. Furnishing the data is voluntary; however, without all required data program, payment will not be approved or provided.

**§ 760.207 Notice of loss and application period.**

(a) In addition to submitting an application for payment at the appropriate time, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses that create or could create a claim for benefits must:

(1) For losses during calendar year 2008 and in calendar year 2009 prior to September 11, 2009, provide a notice of loss to FSA no later than December 10, 2009;

(2) For losses on or after September 11, 2009, the participant must provide a notice of loss to FSA within the earlier of:

(i) 30 calendar days of when the loss is apparent to the participant or

(ii) 30 calendar days after the end of the calendar year in which the loss occurred.

(3) The participant must submit the notice of loss required in paragraphs (a)(1) and (a)(2) of this section to the administrative FSA county office

(b) In addition to the notices of loss required in paragraph (a) of this section, a participant must also submit a completed application for payment no later than:

(1) 30 calendar days after the end of the calendar year in which the loss occurred or

(2) December 10, 2009 for losses that occurred during 2008.

**§ 760.208 Availability of funds.**

By law, ''up to'' $50 million per year for the years in question may be approved for use by the Secretary and accordingly, within that cap, the only funds that will be considered available to pay claims will be that amount approved by the Secretary. Nothing in these regulations will limit the ability of the Secretary to restrict the availability of funds for the program as permitted by the relevant legislation. Payments will not be made for claims arising out of a particular year until, for all claims for that year, the time for applying for a payment has passed. In the event that, within the limits of the funding made available by the Secretary within the statutory cap, approval of eligible applications would result in expenditures in excess of the amount available, FSA will prorate the available funds by a national factor to reduce the total expected payments to the amount made available by the Secretary. FSA will make payments based on the factor for the national rate determined by FSA. FSA will prorate the payments in such manner as it determines appropriate and reasonable. Claims that are unpaid or prorated for a calendar year for any reason will not be carried forward for payment under other funds for later years or otherwise, but will be considered, as to any unpaid amount, void and nonpayable.

**§ 760.209 Livestock payment calculations.**

(a) Payments for an eligible livestock producer will be calculated based on losses for no more than 90 days during the calendar year. Payment calculations for feed losses will be based on 60 percent of the producer's actual cost for:

(1) Livestock feed that was purchased forage or feedstuffs intended for use as feed for the participant's eligible livestock that was physically damaged or destroyed due to the direct result of an eligible adverse weather or eligible loss condition, as provided in § 760.203(d)(1);

(2) Livestock feed that was mechanically harvested forage or feedstuffs intended for use as feed for the participant's eligible livestock that was physically damaged or destroyed after harvest due to the direct result of an eligible adverse weather or eligible loss condition, as provided in § 760.203(d)(2);

(3) The additional cost incurred for providing or transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(d)(3); or

(4) The additional cost of purchasing additional livestock feed above normal, to maintain the eligible livestock during an eligible adverse weather or eligible loss condition until additional livestock feed becomes available, as provided in § 760.203(d)(4).

(b) Payments for an eligible livestock producer for grazing losses, except for losses due to wildfires on non-Federal land, will be calculated based on 60 percent of the lesser of:

(1) The total value of the feed cost for all covered livestock owned by the eligible livestock producer based on the number of days grazing was lost, not to exceed 90 days of daily feed cost for all covered livestock, or

(2) The total value of grazing lost for all eligible livestock based on the normal carrying capacity, as determined by the Secretary, of the eligible grazing land of the eligible livestock producer

for the number of grazing days lost, not to exceed 90 days of lost grazing.

(c) The total value of feed cost to be used in the calculation for paragraph (b)(1) of this section is based on the number of days grazing was lost and equals the product obtained by multiplying:

(1) A payment quantity equal to the feed grain equivalent, as determined in paragraph (d) of this section;

(2) A payment rate equal to the corn price per pound, as determined in paragraph (e) of this section;

(3) The number of all covered livestock owned by the eligible producer converted to an animal unit basis;

(4) The number of days grazing was lost, not to exceed 90 calendar days during the normal grazing period for the specific type of grazing land; and

(5) The producer's ownership share in the livestock.

(d) The feed grain equivalent to be used in the calculation for paragraph (c)(1) of this section equals, in the case of:

(1) An adult beef cow, 15.7 pounds of corn per day or

(2) Any other type or weight of livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed that specific type of livestock.

(e) The corn price per pound to be used in the calculation for paragraph (c)(2) of this section equals the quotient obtained by dividing:

(1) The higher of:

(i) The national average corn price per bushel of corn for the 12-month period immediately preceding March 1 of the calendar year for which payments are calculated; or

(ii) The national average corn price per bushel of corn for the 24-month period immediately preceding March 1 of the calendar year for which payments are calculated; by

(2) 56.

(f) The total value of grazing lost to be used in the calculation for paragraph (b)(2) of this section equals the product obtained by multiplying:

(1) A payment quantity equal to the feed grain equivalent of 15.7 pounds of corn per day;

(2) A payment rate equal to the corn price per pound, as determined in paragraph (e) of this section;

(3) The number of animal units the eligible livestock producer's grazing land or pastureland can sustain during the normal grazing period in the county for the specific type of grazing land or pastureland, in the absence of an eligible adverse weather or eligible loss condition, determined by dividing the:

(i) Number of eligible grazing land or pastureland acres of the specific type of grazing land or pastureland by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland; and

(4) The number of days grazing was lost, not to exceed 90 calendar days during the normal grazing period for the specific type of grazing land.

(g) Payments for an eligible livestock producer for grazing losses due to a wildfire on non-Federal land will be calculated by multiplying:

(1) The result of dividing:

(i) The number of acres of grazing land or pastureland acres affected by the fire by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland; times

(2) The daily value of grazing as calculated by FSA under this section; times

(3) The number of days grazing was lost due to fire, not to exceed 180 calendar days; times

(4) 50 percent.

(h) Payments for an eligible livestock producer for eligible livestock death losses due to an eligible loss condition will be based on the following:

(1) Payments will be calculated by multiplying:

(i) The national payment rate for each livestock category times

(ii) The number of eligible livestock that died in each category as a result of an eligible loss condition in excess of normal mortality, as determined in paragraph (d)(2) of this section;

(2) Normal mortality for each livestock category as determined by FSA on a statewide basis using local data sources including, but not limited to, State livestock organizations and the Cooperative Extension Service for the State.

(3) National payment rates to be used in the calculation for paragraph (b)(1) of this section for eligible livestock owners and eligible livestock contract growers are:

(i) A national payment rate for eligible livestock owners that is based on 75 percent of the average fair market value of the applicable livestock as computed using nationwide prices for the previous calendar year unless some other price is approved by the Deputy Administrator.

(ii) A national payment rate for eligible livestock contract growers that is based on 75 percent of the relevant average income loss sustained by the contract grower, with respect to the dead livestock.

(i) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

**§ 760.210 Honeybee payment calculations.**

(a) An eligible honeybee producer may receive payments for honeybee feed losses due to an eligible adverse weather or loss condition, as provided in § 760.203(g), based on 60 percent of the producer's actual cost for honeybee feed that was:

(1) Damaged or destroyed due to an eligible adverse weather or eligible loss condition and

(2) Intended as feed for an eligible honeybee colony, as provided in § 760.204(g);

(b) An eligible honeybee producer may receive payments for honeybee colony losses due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(h), based on 60 percent of the producer's actual replacement cost for a honeybee colony that was damaged or destroyed due to an eligible adverse weather or eligible loss condition.

(c) An eligible honeybee producer may receive payments for honeybee hive losses due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(h), based on 60 percent of the producer's actual replacement cost for a honeybee colony that was damaged or destroyed due to an eligible adverse weather or eligible loss condition.

(d) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

**§ 760.211 Farm-raised fish payment calculations.**

(a) An eligible farm-raised fish producer may receive payments for fish feed losses due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(g), based on 60 percent of the producer's actual replacement cost for the fish feed that was:

(1) Damaged or destroyed due to an eligible adverse weather or eligible loss condition and

(2) Intended as feed for the eligible farm-raised fish, as provided in § 760.204(h)(1).

(b) An eligible producer of farm-raised game or sport fish may receive payments for death losses of farm-raised fish due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(i), based on 60 percent of the producer's actual replacement cost of the game or sport fish that died as a direct result of an eligible adverse weather or eligible loss condition.

(c) Payments calculated in this section or elsewhere with respect to ELAP are subject to the adjustments and limits provided for in this part and are also subject to the payment limitations and

average adjusted gross income limitations that are contained in subpart B.

■ 5. Add subpart D to part 760 to read as follows:

**Subpart D—Livestock Forage Disaster Program**

Sec.
760.301 Applicability.
760.302 Definitions.
760.303 Eligible livestock producer.
760.304 Covered livestock.
760.305 Eligible grazing losses.
760.306 Application for payment.
760.307 Payment calculation.

## Subpart D—Livestock Forage Disaster Program

### § 760.301 Applicability.

(a) This subpart establishes the terms and conditions under which the Livestock Forage Disaster Program (LFP) will be administered.

(b) Eligible livestock producers will be compensated for eligible grazing losses for covered livestock that occur due to a qualifying drought or fire that occurs:

(1) On or after January 1, 2008, and before October 1, 2011, and

(2) In the calendar year for which benefits are being requested.

### § 760.302 Definitions.

The following definitions apply to this subpart and to the administration of LFP. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

*Adult beef bull* means a male beef breed bovine animal that was at least 2 years old and used for breeding purposes on or before the beginning date of a qualifying drought or fire.

*Adult beef cow* means a female beef breed bovine animal that had delivered one or more offspring. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

*Adult buffalo and beefalo bull* means a male animal of those breeds that was at least 2 years old and used for breeding purposes on or before the beginning date of a qualifying drought or fire.

*Adult buffalo and beefalo cow* means a female animal of those breeds that had delivered one or more offspring. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

*Adult dairy bull* means a male dairy breed bovine animal at least 2 years old used primarily for breeding dairy cows on or before the beginning date of a qualifying drought or fire.

*Adult dairy cow* means a female dairy breed bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

*Agricultural operation* means a farming operation.

*Application* means the ''Livestock Forage Disaster Program'' form.

*Commercial use* means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible livestock producer.

*Contract* means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

*Covered livestock* means livestock of an eligible livestock producer that, during the 60 days prior to the beginning date of a qualifying drought or fire, the eligible livestock producer owned, leased, purchased, entered into a contract to purchase, was a contract grower of, or sold or otherwise disposed of due to a qualifying drought during the current production year. It includes livestock that the producer otherwise disposed of due to drought in one or both of the two production years immediately preceding the current production year as determined by the Secretary. Notwithstanding the foregoing portions of this definition, covered livestock for ''contract growers'' will not include livestock in feedlots. ''Contract growers'' under LFP will only include producers of livestock not in feedlots whose income is dependent on the actual weight gain and survival of the livestock.

*Equine animal* means a domesticated horse, mule, or donkey.

*Farming operation* means a business enterprise engaged in producing agricultural products.

*Federal Agency* means, with respect to the control of grazing land, an agency of the Federal government that manages rangeland on which livestock is generally permitted to graze. For the purposes of this section, it includes, but is not limited to, the U.S. Department of the Interior (DOI) Bureau of Indian Affairs (BIA), DOI Bureau of Land Management (BLM), and USDA Forest Service (FS).

*Goat* means a domesticated, ruminant mammal of the genus *Capra,* including Angora goats.

*Non-adult beef cattle* means a beef breed bovine animal that weighed 500 pounds or more on or before the beginning date of a qualifying drought or fire but that does not meet the definition of adult beef cow or bull.

*Non-adult buffalo or beefalo* means an animal of those breeds that weighed 500 pounds or more on or before the beginning date of a qualifying drought or fire, but does not meet the definition of adult buffalo or beefalo cow or bull.

*Non-adult dairy cattle* means a bovine animal, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on or before the beginning date of a qualifying drought or fire, but that does not meet the definition of adult dairy cow or bull.

*Normal carrying capacity* means, with respect to each type of grazing land or pastureland in a county, the normal carrying capacity that would be expected from the grazing land or pastureland for livestock during the normal grazing period in the county, in the absence of a drought or fire that diminishes the production of the grazing land or pastureland.

*Normal grazing period* means, with respect to a county, the normal grazing period during the calendar year with respect to each specific type of grazing land or pastureland in the county served by the applicable county committee.

*Owner* means one who had legal ownership of the livestock for which benefits are being requested during the 60 days prior to the beginning of a qualifying drought or fire.

*Poultry* means a domesticated chicken, turkey, duck, or goose. Poultry are further delineated by sex, age, and purpose of production, as determined by FSA.

*Sheep* means a domesticated, ruminant mammal of the genus *Ovis.*

*Swine* means a domesticated omnivorous pig, hog, or boar. Swine are further delineated by sex and weight, as determined by FSA.

*U.S. Drought Monitor* is a system for classifying drought severity according to a range of abnormally dry to exceptional drought. It is a collaborative effort between Federal and academic partners, produced on a weekly basis, to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center at *http://www.drought.unl.edu/dm/monitor.html.*

**§ 760.303 Eligible livestock producer.**

(a) To be considered an eligible livestock producer, the eligible producer on a farm must:

(1) During the 60 days prior to the beginning date of a qualifying drought or fire, own, cash or share lease, or be a contract grower of covered livestock or

(2) Provide pastureland or grazing land for covered livestock, including cash-leased pastureland or grazing land, that is:

(i) Physically located in a county affected by a qualifying drought during the normal grazing period for the county or

(ii) Rangeland managed by a Federal agency for which the otherwise eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock due to a qualifying fire.

(b) The eligible livestock producer must have certified that the livestock producer has suffered a grazing loss due to a qualifying drought or fire to be eligible for LFP payments.

(c) An eligible livestock producer does not include any owner, cash or share lessee, or contract grower of livestock that rents or leases pastureland or grazing land owned by another person on a rate-of-gain basis. (That is, where the lease or rental agreement calls for payment based in whole or in part on the amount of weight gained by the animals that use the pastureland or grazing land.)

(d) A producer seeking payment must not be ineligible for payments under the restrictions applicable to foreign persons contained in § 760.103(b) and must meet all other requirements of subpart B and other applicable USDA regulations.

(e) If a contract grower is an eligible livestock producer for covered livestock, the owner of that livestock is not eligible for payment.

**§ 760.304 Covered livestock.**

(a) To be considered covered livestock for LFP payments, livestock must meet all the following conditions:

(1) Be adult or non-adult beef cattle, adult or non-adult beefalo, adult or non-adult buffalo, adult or non-adult dairy cattle, alpacas, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine;

(2) Be livestock that would normally have been grazing the eligible grazing land or pastureland on the beginning date:

(i) Of the qualifying drought during the normal grazing period for the specific type of grazing land or pastureland for the county or

(ii) When the Federal agency prohibited the eligible livestock producer from using the managed rangeland for grazing due to a fire;

(3) Be livestock that the eligible livestock producer:

(i) During the 60 days prior to the beginning date of a qualifying drought or fire:

(A) Owned,

(B) Leased,

(C) Purchased,

(D) Entered into a contract to purchase, or

(E) Was a contract grower of; or

(ii) Sold or otherwise disposed of due to qualifying drought during:

(A) The current production year or

(B) 1 or both of the 2 production years immediately preceding the current production year;

(4) Been maintained for commercial use as part of the producer's farming operation on the beginning date of the qualifying drought or fire;

(5) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, roping, hunting, pets, or for show; and

(6) Not have been livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary.

(b) The covered livestock categories are:

(1) Adult beef cows or bulls,

(2) Adult buffalo or beefalo cows or bulls,

(3) Adult dairy cows or bulls,

(4) Alpacas,

(5) Deer,

(6) Elk,

(7) Emu,

(8) Equine,

(9) Goats,

(10) Llamas,

(11) Non-adult beef cattle,

(12) Non-adult buffalo or beefalo,

(13) Non-adult dairy cattle,

(14) Poultry,

(15) Reindeer,

(16) Sheep, and

(17) Swine.

(c) Livestock that are not covered include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary;

(2) Yaks;

(3) Ostriches;

(4) All beef and dairy cattle, and buffalo and beefalo that weighed less than 500 pounds on the beginning date of the qualifying drought or fire;

(5) Any wild free roaming livestock, including horses and deer; and

(6) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained for recreational purposes, such as:

(i) Roping,

(ii) Hunting,

(iii) Show,

(iv) Pleasure,

(v) Use as pets, or

(vi) Consumption by owner.

**§ 760.305 Eligible grazing losses.**

(a) A grazing loss due to drought is eligible for LFP only if the grazing loss for the covered livestock occurs on land that:

(1) Is native or improved pastureland with permanent vegetative cover or

(2) Is planted to a crop planted specifically for the purpose of providing grazing for covered livestock; and

(3) Is grazing land or pastureland that is owned or leased by the eligible livestock producer that is physically located in a county that is, during the normal grazing period for the specific type of grazing land or pastureland for the county, rated by the U.S. Drought Monitor as having a:

(i) D2 (severe drought) intensity in any area of the county for at least 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland for the county, as determined by the Secretary, or

(ii) D3 (extreme drought) or D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county, as determined by the Secretary. (As specified elsewhere in this subpart, the amount of potential payment eligibility will be higher than under (a)(3)(i) of this section where the D4 trigger applies or where the D3 condition as determined by the Secretary lasts at least 4 weeks during the normal grazing period for the specific type of grazing land or pastureland for the county.)

(b) A grazing loss is not eligible for LFP if the grazing loss due to drought on land used for haying or grazing under the Conservation Reserve Program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831–3835a).

(c) A fire qualifies for LFP only if:

(1) The grazing loss occurs on rangeland that is managed by a Federal agency and

(2) The eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire.

(d) An eligible livestock producer may be eligible for LFP payments only on those grazing lands incurring losses for which the livestock producer:

(1) Meets the risk management purchase requirements specified in § 760.104; or

(2) Does not meet the risk management purchase requirements specified in § 760.104 because the risk management purchase requirement is waived according to §§ 760.105, 760.106, or 760.107.

**§ 760.306 Application for payment.**

(a) To apply for LFP, the participant that suffered eligible grazing losses:

(1) During 2008, must submit a completed application for payment and required supporting documentation to the administrative FSA county office no later than December 10, 2009 or

(2) During 2009 and later years, must submit a completed application for payment and required supporting documentation to the administrative FSA county office no later than 30 calendar days after the end of the calendar year in which the grazing loss occurred.

(b) A participant must also provide a copy of the grower contract, if a contract grower, and other supporting documents required for determining eligibility as an applicant at the time the participant submits the completed application for payment. Supporting documents must include:

(1) Evidence of loss,

(2) Current physical location of livestock in inventory,

(3) Evidence of meeting risk management purchase requirements as specified in subpart B,

(4) Evidence that grazing land or pastureland is owned or leased,

(5) A report of acreage according to part 718 of this chapter for the grazing lands incurring losses for which assistance is being requested under this subpart;

(6) Adequate proof, as determined by FSA that the grazing loss:

(i) Was for the covered livestock;

(ii) If the loss of grazing occurred as the result of a fire that the:

(A) Loss was due to a fire and

(B) Participant was prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire;

(iii) Occurred on or after January 1, 2008, and before October 1, 2011; and

(iv) Occurred in the calendar year for which payments are being requested;

(7) Adequate proof, absent an appropriate waiver (if there is a waiver, it itself must be documented by the producer), as determined by FSA, that the participant had obtained, for the grazing land incurring the losses for which assistance is being requested, one or both of the following:

(i) A policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524); or

(ii) Filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the noninsured crop disaster assistance program;

(8) Any other supporting documentation as determined by FSA to be necessary to make a determination of eligibility of the participant. Supporting documents include, but are not limited to: Verifiable purchase and sales records; grower contracts; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Records; National Guard records; written contracts; production records; private insurance documents; sales records; and similar documents determined acceptable to FSA.

(c) Data furnished by the participant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data, program benefits will not be approved or provided.

**§ 760.307 Payment calculation.**

(a) An eligible livestock producer will be eligible to receive payments for grazing losses for qualifying drought as specified in § 760.305(a) equal to one, two, or three times the monthly payment rate specified in paragraphs (e) or (f) of this section. Total LFP payments to an eligible livestock producer in a calendar year for grazing losses due to qualifying drought will not exceed three monthly payments for the same livestock. Payments calculated in this section or elsewhere with respect to LFP are subject to the adjustments and limits provided for in this part and are also subject to the payment limitations and average adjusted gross income provisions that are contained in subpart B. Payment may only be made to the extent that eligibility is specifically provided for in this subpart. Hence, with respect to drought, payments will be made only as a ''one month'' payment, a ''two month'' payment, or a ''three month'' payment based on the provisions of paragraphs (b), (c), and (d) of this section.

(b) To be eligible to receive a one month payment, that is a payment equal to the monthly feed cost as determined under paragraph (g) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D2 severe drought (intensity) in any area of the county for at least 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland in the county.

(c) To be eligible to receive a two month payment, that is a payment equal to twice the monthly feed cost as determined under paragraph (g) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county.

(d) To be eligible to receive a three month payment, that is a payment equal to three times the monthly feed cost as determined under paragraph (g) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county for at least 4 weeks during the normal grazing period for the specific type of grazing land or pastureland for the county, or is rated as having a D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county.

(e) The monthly payment rate for LFP for grazing losses due to a qualifying drought, except as provided in paragraph (f) of this section, will be equal to 60 percent of the lesser of:

(1) The monthly feed cost for all covered livestock owned or leased by the eligible livestock producer, as determined in paragraph (g) of this section or

(2) The monthly feed cost calculated by using the normal carrying capacity of the eligible grazing land of the eligible livestock producer, as determined in paragraph (j) of this section.

(f) In the case of an eligible livestock producer that sold or otherwise disposed of covered livestock due to a qualifying drought in 1 or both of the 2 production years immediately preceding

the current production year, the payment rate is 80 percent of the monthly payment rate calculated in paragraph (e) of this section.

(g) The monthly feed cost for covered livestock equals the product obtained by multiplying:

(1) 30 days;

(2) A payment quantity equal to the amount referred to in paragraph (h) of this section as the ''feed grain equivalent'', as determined under paragraph (h) of this section; and

(3) A payment rate equal to the corn price per pound, as determined in paragraph (i) of this section.

(h) The feed grain equivalent equals, in the case of:

(1) An adult beef cow, 15.7 pounds of corn per day or

(2) In the case of any other type or weight of covered livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed that specific type of livestock.

(i) The corn price per pound equals the quotient obtained by dividing:

(1) The higher of:

(i) The national average corn price per bushel for the 12-month period immediately preceding March 1 of the calendar year for which LFP payment is calculated or

(ii) The national average corn price per bushel for the 24-month period immediately preceding March 1 of the calendar year for which LFP payment is calculated

(2) By 56.

(j) The monthly feed cost using the normal carrying capacity of the eligible grazing land equals the product obtained by multiplying:

(1) 30 days;

(2) A payment quantity equal to the feed grain equivalent of 15.7 pounds of corn per day;

(3) A payment rate equal to the corn price per pound, as determined in paragraph (i) of this section; and

(4) The number of animal units the eligible livestock producer's grazing land or pastureland can sustain during the normal grazing period in the county for the specific type of grazing land or pastureland, in the absence of a drought or fire, determined by dividing the:

(i) Number of eligible grazing land or pastureland acres of the specific type of grazing land or pastureland by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland as determined under this subpart.

(k) An eligible livestock producer will be eligible to receive payments for grazing losses due to a fire as specified in § 760.305(c):

(1) For the period, subject to paragraph (l)(2) of this section:

(i) Beginning on the date on which the Federal Agency prohibits the eligible livestock producer from using the managed rangeland for grazing and

(ii) Ending on the earlier of the last day of the Federal lease of the eligible livestock producer or the day that would make the period a 180 day period and

(2) For grazing losses that occur on not more than 180 days per calendar year.

(3) For 50 percent of the monthly feed cost, as determined under § 760.308(g), pro-rated to a daily rate, for the total number of livestock covered by the Federal lease of the eligible livestock producer.

Signed in Washington, DC, September 4, 2009.

**Jonathan W. Coppess,**

*Administrator, Farm Service Agency.*

[FR Doc. E9–21906 Filed 9–9–09; 11:15 am]

BILLING CODE 3410–05–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2008–0352; FRL–8430–4]**

## Saflufenacil; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of saflufenacil and its metabolites and degradates in or on various plant and livestock commodities. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective September 11, 2009. Objections and requests for hearings must be received on or before November 10, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0352. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Montague, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1243; e-mail address: *montague.kathryn@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance

regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0352 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before November 10, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0352, by one of the following methods:

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

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

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

## II. Petition for Tolerance

In the **Federal Register** of June 13, 2008 (73 FR 33814) (FRL–8367–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F7322) by BASF Corporation, 26 Davis Dr., P.O. Box 13528, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR part 180 be amended by adding a section for the herbicide saflufenacil and establishing tolerances therein for combined residues of saflufenacil (aka BAS 800 H), N′-[2-chloro-4-fluoro-5-(3-methyl-2,6-dioxo-4-(trifluromethyl)-3,6-dihydro-1(2*H*)-pyrimidinyl)benzyl]-*N*-isopropyl-*N*-methylsulfamide plus its metabolite M800H11, *N*-[2-chloro-5-(2,6-dioxo-4(trifluormethyl)-3,6-dihydro-1(2*H*)-pyrimidinyl)-4-fluorobenzoyl]-N′-isopropylsulfamide, and its metabolite M800H35, (*N*-[4-chloro-2-fluoro-5-({[(isopropylamino)sulfonyl]amino}carbonyl)phenyl]urea), in or on legume vegetables (group 06), citrus fruits (group 10), pome fruits (group 11), stone fruits (group 12), tree nuts (group 14), pistachio, cereal grains (group 15), undelinted cotton seed, cotton gin byproducts, and grape at 0.03 parts per million (ppm); foliage of legume vegetables (group 07); forage, fodder and straw of cereal grains (group 16); and sorghum stover at 0.1 ppm; almond hulls at 0.2 ppm; and sunflower seed at 0.7 ppm. The petition also requested that tolerances be established for residues of saflufenacil, M800H11 and M800H35 on animal kidney at 0.02 ppm and animal liver at 0.8 ppm, although the proposed tolerance levels for kidney and liver were not specified in the company's notice of filing. That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the tolerance levels for almond hulls and sunflower seed; determined that a tolerance for sorghum stover is unnecessary; determined that tolerances are required for additional livestock commodities; and revised the tolerance expression for plant and livestock commodities. EPA also revised commodity terms, as necessary, to agree with the Agency's Food and Feed Commodity Vocabulary. The reasons for these changes are explained in Unit IV.D.

## III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of saflufenacil, including its metabolites and degradates, on the plant commodities almond, hulls at 0.10 ppm; cotton, gin byproducts at 0.10 ppm; cotton, undelinted seed at 0.03 ppm; fruit, citrus, group 10 at 0.03 ppm; fruit, pome, group 11 at 0.03 ppm; fruit, stone, group 12 at 0.03 ppm; grain, cereal, forage, fodder and straw group 16 at 0.10 ppm; grain, cereal, group 15 at 0.03 ppm; grape at 0.03 ppm; nut, tree, group 14 at 0.03 ppm; pistachio at 0.03 ppm; sunflower, seed at 1.0 ppm; vegetable, foliage of legume, group 7 at 0.10 ppm; and vegetable, legume, group 6 at 0.03 ppm; and on the livestock commodities cattle, fat at 0.01 ppm; cattle, liver at 0.80 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts, except liver at 0.02 ppm; goat, fat at 0.01 ppm; goat, liver at 0.80 ppm; goat, meat at 0.01 ppm; goat, meat byproducts, except liver at 0.02 ppm; hog, fat at 0.01 ppm; hog, liver at 0.80 ppm; hog, meat at 0.01 ppm; hog, meat byproducts, except liver at 0.02 ppm; horse, fat at 0.01 ppm; horse, liver at 0.80 ppm; horse, meat at 0.01 ppm; horse, meat byproducts, except liver at 0.02 ppm; milk at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, liver at 0.80 ppm; sheep, meat at 0.01 ppm; and sheep, meat byproducts, except liver at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Saflufenacil has low acute toxicity via the oral, dermal, and inhalation routes of exposure. It is slightly irritating to the eye but is neither a dermal irritant nor sensitizer.

Short-term, subchronic, and chronic toxicity studies in rats, mice, and dogs identified the hematopoietic system as the target organ of saflufenacil. Protoporphyrinogen oxidase inhibition in the mammalian species may result in disruption of heme synthesis which in turn causes anemia. In these studies, decreased hematological parameters (red blood cells (RBC), hematocrit (Ht), mean corpuscular volume (MCV), mean corpuscular hemoglobin (MCH), and mean corpuscular hemoglobin concentration (MCHC)) were seen at about the same dose level across species, except in the case of the dog, where the effects were seen at a slightly higher dose. These effects occurred around the same dose level from the short-term through long-term exposures without increasing in severity. Effects were also seen in the liver (increased weight, centrilobular fatty change, and lymphoid infiltrate) in mice, the spleen (increased spleen weight and extramedullary hematopoiesis) in rats, and in both these organs (increased iron storage in the liver and extramedullary hematopoiesis in the spleen) in dogs. These effects also occurred around the same dose level from the short-term through long-term exposures without increasing in severity. No dermal toxicity was seen at the limit dose in a 28–day dermal toxicity study in rats.

Carcinogenicity studies in rats and mice showed no evidence of increased incidence of tumors at the tested doses. Saflufenacil is weakly clastogenic in the *in vitro* chromosomal aberration assay in V79 cells in the presence of S9 activation; however, the response was not evident in the absence of S9 activation. It is neither mutagenic in bacterial cells nor clastogenic in rodents *in vivo*. Saflufenacil is classified as ''not likely to be carcinogenic to humans.''

Increased fetal and offspring susceptibility to saflufenacil were observed in the developmental toxicity studies in the rat and rabbit and in the 2–generation reproduction study in the rat. Developmental effects such as decreased fetal body weights and increased skeletal variations occurred at doses that were not maternally toxic in the developmental study in rats, indicating increased quantitative susceptibility. In rabbits, developmental effects such as increased liver porphyrins were observed at doses that were not maternally toxic, indicating increased quantitative susceptibility. In the 2–generation reproduction study in rats, offspring effects such as increased number of stillborn pups, decreased viability and lactation indices, decreased pre-weaning body weight and/or body-weight gain, and changes in hematological parameters were observed at a dose resulting in less severe maternal toxicity (decreased food intake, body weight/weight gain and changes in hematological parameters and organ weights indicative of anemia), indicating increased qualitative susceptibility.

There was no evidence of neurotoxicity or neuropathology in the toxicity database for saflufenacil. In the acute neurotoxicity study, a decrease in motor activity was observed on the first day of dosing at the limit dose in males only. The finding was not accompanied by any other neuropathological changes and was considered a reflection of a mild and transient general systemic toxicity and not a substance-specific neurotoxic effect. In the subchronic neurotoxicity study, systemic toxicity (anemia), but no evidence of neurotoxicity, was seen in males and females.

There is no evidence of immunotoxity in the saflufenacil database. The increase in spleen weight seen only in rats in the 90–day oral toxicity study is attributable to an increased clearance of defective RBCs (i.e., defective hemoglobin synthesis) and is thus an indication of toxicity to the hematopoietic system rather than to the immune system.

Specific information on the studies received and the nature of the adverse effects caused by saflufenacil as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document *Saflufenacil. Revised Human-Health Risk Assessment for Proposed Uses in/on Legume Vegetables (Crop Group 06), the Foliage of Legume Vegetables (Crop Group 07), Citrus Fruits (Crop Group 10), Pome Fruits (Crop Group 11), Stone Fruits (Crop Group 12), Tree Nuts (Crop Group14), Cereal Grains (Crop Group 15), Forage, Fodder and Straw of Cereal Grains (Crop Group 16), Grapes, Cotton, and Sunflower*, page 45 in docket ID number EPA–HQ–OPP–2008–0352.

*B. Toxicological Endpoints*

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for saflufenacil used for human risk assessment can be found at *http://www.regulations.gov* in the document *Saflufenacil. Revised Human-Health Risk Assessment for Proposed Uses in/on Legume Vegetables (Crop Group 06), the Foliage of Legume Vegetables (Crop Group 07), Citrus Fruits (Crop Group 10), Pome Fruits (Crop Group 11), Stone Fruits (Crop Group 12), Tree Nuts (Crop Group14), Cereal Grains (Crop Group 15), Forage, Fodder and Straw of Cereal Grains*

*(Crop Group 16), Grapes, Cotton, and Sunflower*, page 27 in docket ID number EPA–HQ–OPP–2008–0352.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to saflufenacil, EPA considered exposure under the petitioned-for tolerances. No other tolerances have been established for saflufenacil. EPA assessed dietary exposures from saflufenacil in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the U. S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed that residues are present in all commodities at the tolerance level and that 100% of commodities are treated with saflufenacil. Dietary Exposure Evaluation Model (DEEM(TM)) 7.81 default concentration factors were used to estimate residues of saflufenacil in processed commodities.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used the same assumptions (tolerance-level residues, 100% crop treated, and DEEM(TM) 7.81 default concentration factors) as in the acute exposure assessment.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, EPA classified saflufenacil as ''not likely to be carcinogenic to humans;'' therefore, an exposure assessment to evaluate cancer risk is unnecessary for this chemical.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue or PCT information in the dietary assessment for saflufenacil. Tolerance-level residues and 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for saflufenacil in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of saflufenacil. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Pesticide Root Zone Model/Ground Water (PRZM/GW) models, the estimated drinking water concentrations (EDWCs) of saflufenacil for acute exposures are estimated to be 37.3 parts per billion (ppb) for surface water and 180 ppb for ground water. EDWCs for chronic exposures for non-cancer assessments are estimated to be 23.8 ppb for surface water and 173 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 180 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 173 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Saflufenacil is not registered for any specific use patterns that would result in residential exposure.

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

EPA has not found saflufenacil to share a common mechanism of toxicity with any other substances, and saflufenacil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that saflufenacil does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

*D. Safety Factor for Infants and Children*

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

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicity database for saflufenacil includes rat and rabbit developmental toxicity studies and a two-generation reproduction toxicity study in rats. As discussed in Unit III.A. there was evidence of quantitative susceptibility of fetuses to saflufenacil exposure in the developmental toxicity studies in rats and rabbits and evidence of qualitative susceptibility of offspring in the rat reproduction study.

An analysis was performed to determine the degree of concern for the effects observed in the developmental and reproduction toxicity studies when considered in the context of all available toxicity data, and to identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of saflufenacil. The degree of concern is low and there are no residual uncertainties for the increased susceptibility since:

i. Clear NOAELs/LOAELs were established for the developmental effects seen in rats and rabbits as well as for the offspring effects seen in the 2–generation reproduction study.

ii. Dose-response relationships for the effects of concern are well characterized.

iii. None of the effects in the developmental or reproduction studies were attributable to a single exposure and, therefore, are not of concern for acute risk assessment.

iv. The dose used to evaluate chronic dietary risks (4.6 milligrams/kilogram/day (mg/kg/day)) is lower than the NOAELS for fetal/offspring effects in the developmental and reproduction studies (5 mg/kg/day in the rat developmental study, 50 mg/kg/day in the rabbit developmental study, and 15 mg/kg/day in the rat reproduction study) and is, therefore, protective of the developmental and offspring effects observed in these studies and

v. Residential exposures are not expected, since there are no residential uses proposed for saflufenacil.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for saflufenacil is adequate to assess the prenatal and postnatal toxicity of saflufenacil. In accordance with 40 CFR part 158 Toxicology Data requirements, an immunotoxicity study (870.7800) is required for saflufenacil. In the absence of specific immunotoxicity studies, EPA has evaluated the available saflufenacil toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. An increase in spleen weight, an organ of the immune system, was seen in rats in the 90–day oral toxicity study. This effect is attributable to an increased clearance of defective RBCs (i.e, defective hemoglobin synthesis) and is thus an indication of toxicity to the hematopoietic system rather than to the immune system. There were no other effects on immune system organs observed in toxicity studies with saflufenacil, and saflufenacil does not belong to a class of chemicals (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic. Based on these considerations, EPA does not believe that conducting immunotoxicity testing will result in a point of departure lower than those already selected for saflufenacil, and an additional database uncertainty factor is not needed to account for potential immunotoxicity.

ii. There is no indication that saflufenacil is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is evidence of increased quantitative and qualitative susceptibility of offspring in the developmental and reproduction studies for saflufenacil; however, the degree of concern is low and the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of saflufenacil.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. EPA made conservative (protective) assumptions in the groundwater and surface water modeling used to assess exposure to saflufenacil in drinking water. Residential exposure to saflufenacil is not expected. These assessments will not underestimate the exposure and risks posed by saflufenacil.

*E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to saflufenacil will occupy less than 1% of the aPAD for all population subgroups, including infants and children.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to saflufenacil from food and water will utilize 28% of the cPAD for infants less than 1 year old, the population group receiving the greatest exposure. There are no residential uses for saflufenacil.

3. *Short-term/intermediate-term risk*. Short-term and intermediate-term aggregate exposures take into account short-term or intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Saflufenacil is not registered for any use patterns that would result in residential exposure. Therefore, the short-term and intermediate-term aggregate risk is the sum of the risk from exposure to saflufenacil through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. Saflufenacil is classified as ''not likely to be carcinogenic to humans'' and is, therefore, not expected to pose a cancer risk.

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

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry (LC-MS/MS) methods D0603/02 (plants) and L0073/01 (livestock)) is available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

*B. International Residue Limits*

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) established for residues of saflufenacil and its metabolites in crops or livestock commodities. The residue definition and tolerances being established by this rule are harmonized with MRLs being established concurrently by Canada and Australia.

*C. Response to Comments*

EPA received one comment in response to the petition notice of filing. The commenter, a private citizen, expressed strong objections to ''genetically engineered foods.'' The commenter's objections are not relevant to this petition, since the tolerances for saflufenacil do not involve genetically altered herbicide-tolerant crops.

*D. Revisions to Petitioned-For Tolerances*

Based upon review of the data supporting the petition, EPA has revised the tolerance levels for almond hulls and sunflower seed; determined that a tolerance for sorghum stover is unnecessary; determined that tolerances are required for additional livestock commodities; and revised the tolerance expression for plant and livestock commodities. EPA also revised commodity terms, as necessary, to agree with the Agency's Food and Feed Commodity Vocabulary.

EPA increased the tolerance on sunflower seed from 0.7 ppm to 1.0 ppm based on analysis of the field trial data using the Agency's Tolerance Spreadsheet in accordance with the *Guidance for Setting Pesticide Tolerances Based on Field Trial Data*. The tolerance on almond hulls was decreased from 0.2 ppm to 0.10 ppm, based on the results of field trials showing that all residues were less than the limit of quantitation (LOQ) (0.025 ppm for each analyte) at the proposed preharvest interval (PHI) of 7 days. The

tolerance level was determined by adding the LOQs for saflufenacil and its two regulated analytes and rounding up to 0.10 ppm. EPA determined that a separate tolerance on sorghum stover is unnecessary, since sorghum stover is included in crop group 16 (grain, cereal, forage, fodder and straw group).

The petitioner proposed tolerances for saflufenacil and its metabolites M800H11 and M800H35 on animal kidney at 0.02 ppm and on animal liver at 0.80 ppm. EPA determined that M800H11 and M800H35 should be excluded from the tolerance expression for livestock commodities based on the low potential for exposure to these metabolites from the proposed uses. Data from the cattle feeding study with saflufenacil indicate that tolerances are needed for residues of saflufenacil at 0.80 ppm in liver and at 0.02 ppm in the meat byproducts, except liver, of cattle, goats, horses, hogs, and sheep. EPA is also establishing tolerances at the method LOQ (0.01 ppm) for fat, meat, and milk, because feeding levels in the cattle feeding study were not high enough (i.e., 10X) to demonstrate conclusively that detectable residues would not occur in these livestock commodities.

Although the commodity terms proposed in the petition itself were largely in accordance with the Agency's Food and Feed Commodity Vocabulary, many were incorrectly specified in the Notice of Filing: legume vegetables (group 06); citrus fruits (group 10); pome fruits (group 11); stone fruits (group 12); tree nuts (group 14); cereal grains (group 15); undelinted cotton seed; cotton gin byproducts; foliage of legume vegetables (group 07); forage, fodder and straw of cereal grains (group 16); almond hulls; and sunflower seed. EPA has corrected these commodity terms to read: vegetable, legume, group 6; fruit, citrus, group 10; fruit, pome, group 11; fruit, stone, group 12; nut, tree, group 14; grain, cereal, group 15; cotton, undelinted seed; cotton, gin byproducts; vegetable, foliage of legume, group 7; grain, cereal, forage, fodder and straw group 16; almond, hulls; and sunflower, seed.

Finally, EPA is revising the tolerance expressions for plant and livestock commodities to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The revised tolerance expressions make clear that the tolerances cover ''residues of saflufenacil, including its metabolites and degradates,'' and that compliance with the tolerance levels will be determined, for livestock commodities, by measuring only saflufenacil; and for plant commodities, by measuring only the sum of saflufenacil, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2*H*)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl)amino] sulfonyl]benzamide, and its metabolites *N*-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2*H*)-pyrimidinyl)-4-fluorobenzoyl]-*N'*-isopropylsulfamide and *N*-[4-chloro-2-fluoro-5-({[((isopropylamino)sulfonyl] amino}carbonyl)phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil.

## V. Conclusion

Therefore, tolerances are established for residues of saflufenacil, including its metabolites and degradates, on the plant commodities almond, hulls at 0.10 ppm; cotton, gin byproducts at 0.10 ppm; cotton, undelinted seed at 0.03 ppm; fruit, citrus, group 10 at 0.03 ppm; fruit, pome, group 11 at 0.03 ppm; fruit, stone, group 12 at 0.03 ppm; grain, cereal, forage, fodder and straw group 16 at 0.10 ppm; grain, cereal, group 15 at 0.03 ppm; grape at 0.03 ppm; nut, tree, group 14 at 0.03 ppm; pistachio at 0.03 ppm; sunflower, seed at 1.0 ppm; vegetable, foliage of legume, group 7 at 0.10 ppm; and vegetable, legume, group 6 at 0.03 ppm; and on the livestock commodities cattle, fat at 0.01 ppm; cattle, liver at 0.80 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts, except liver at 0.02 ppm; goat, fat at 0.01 ppm; goat, liver at 0.80 ppm; goat, meat at 0.01 ppm; goat, meat byproducts, except liver at 0.02 ppm; hog, fat at 0.01 ppm; hog, liver at 0.80 ppm; hog, meat at 0.01 ppm; hog, meat byproducts, except liver at 0.02 ppm; horse, fat at 0.01 ppm; horse, liver at 0.80 ppm; horse, meat at 0.01 ppm; horse, meat byproducts, except liver at 0.02 ppm; milk at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, liver at 0.80 ppm; sheep, meat at 0.01 ppm; and sheep, meat byproducts, except liver at 0.02 ppm. Compliance with the tolerance levels for plant commodities will be determined by measuring only the sum of saflufenacil, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2*H*)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl) amino]sulfonyl]benzamide, and its metabolites *N*-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2*H*)-pyrimidinyl)-4-fluorobenzoyl]-*N'*-isopropylsulfamide and *N*-[4-chloro-2-fluoro-5-({[(isopropylamino) sulfonyl]amino}carbonyl)phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil. Compliance with the tolerance levels for livestock commodities will be determined by measuring only saflufenacil.

## VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the

Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

### VII. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 2, 2009.

**Debra Edwards,**

*Director, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

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

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

■ 2. Section 180.649 is added to read as follows:

#### § 180.649 Saflufenacil; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of saflufenacil, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of saflufenacil, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2*H*)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl)amino] sulfonyl]benzamide, and its metabolites *N*-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2*H*)-pyrimidinyl)-4-fluorobenzoyl]-*N'*-isopropylsulfamide and fluoro-5-({[(isopropylamino)sulfonyl] amino}carbonyl)phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil, in or on the commodities.

| Commodity | Parts per million |
|---|---|
| Almond, hulls | 0.10 |
| Cotton, gin byproducts | 0.10 |
| Cotton, undelinted seed | 0.03 |
| Fruit, citrus, group 10 | 0.03 |
| Fruit, pome, group 11 | 0.03 |
| Fruit, stone, group 12 | 0.03 |
| Grain, cereal, forage, fodder and straw Group 16 | 0.10 |
| Grain, cereal, group 15 | 0.03 |
| Grape | 0.03 |
| Nut, tree, group 14 | 0.03 |
| Pistachio | 0.03 |
| Sunflower, seed | 1.0 |
| Vegetable, foliage of legume, group 7 | 0.10 |
| Vegetable, legume, group 6 | 0.03 |

(2) Tolerances are established for residues of saflufenacil, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only saflufenacil, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2*H*)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl) amino]sulfonyl]benzamide, in or on the commodities.

| Commodity | Parts per million |
|---|---|
| Cattle, fat | 0.01 |
| Cattle, liver | 0.80 |
| Cattle, meat | 0.01 |
| Cattle, meat byproducts, except liver | 0.02 |
| Goat, fat | 0.01 |
| Goat, liver | 0.80 |
| Goat, meat | 0.01 |
| Goat, meat byproducts, except liver | 0.02 |
| Hog, fat | 0.01 |
| Hog, liver | 0.80 |
| Hog, meat | 0.01 |
| Hog, meat byproducts, except liver | 0.02 |
| Horse, fat | 0.01 |
| Horse, liver | 0.80 |
| Horse, meat | 0.01 |
| Horse, meat byproducts, except liver | 0.02 |
| Milk | 0.01 |
| Sheep, fat | 0.01 |
| Sheep, liver | 0.80 |
| Sheep, meat | 0.01 |
| Sheep, meat byproducts, except liver | 0.02 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E9–21826 Filed 9–10–09; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2008–0834; FRL–8426–2]**

## Azinphos-methyl, Disulfoton, Esfenvalerate, Ethylene oxide, Fenvalerate, et al.; Tolerance Actions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking certain tolerances for the fungicides prothioconazole and thiabendazole; the herbicide primisulfuron-methyl; and the insecticides azinphos-methyl, disulfoton, esfenvalerate, fenvalerate, and phosalone; the plant growth regulator 1-naphthaleneacetic acid; and the antimicrobial/insecticidal agent ethylene oxide. Also, EPA is modifying certain tolerances for the insecticides disulfoton, esfenvalerate, and phosmet; and the plant growth regulator 1-naphthaleneacetic. In addition, EPA is establishing new tolerances for the insecticides disulfoton, esfenvalerate, and phosmet; and the antimicrobial/insecticidal agent ethylene oxide and ethylene chlorohydrin (a reaction product formed during the fumigation/sterilization process). The regulatory actions finalized in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment program under the Federal Food, Drug, and Cosmetic Act (FFDCA), section 408(q).

**DATES:** This regulation is effective September 11, 2009. Objections and requests for hearings must be received on or before November 10, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0834. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:**

Joseph Nevola, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

### *C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 436a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0834 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 10, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0834, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background

### *A. What Action is the Agency Taking?*

In the **Federal Register** of December 31, 2008 (73 FR 80317) (FRL–8394–7), EPA issued a proposal to revoke, modify, and establish specific tolerances for residues of the fungicides prothioconazole and thiabendazole; the herbicide primisulfuron-methyl; and the insecticides azinphos-methyl, disulfoton, esfenvalerate, fenvalerate, phosalone, and phosmet; and the plant growth regulator 1-naphthaleneacetic acid; and the antimicrobial/insecticidal agent ethylene oxide and ethylene chlorohydrin (a reaction product formed during the fumigation/sterilization process). Also, the proposal of December 31, 2008 (73 FR 80317) provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards.

In this final rule, EPA is revoking, modifying, and establishing specific tolerances for residues of azinphos-methyl, disulfoton, esfenvalerate, ethylene oxide, ethylene chlorohydrin, fenvalerate, 1-naphthaleneacetic acid, phosalone, phosmet, prothioconazole, primisulfuron-methyl, and thiabendazole in or on commodities listed in the regulatory text of this document.

EPA is finalizing these tolerance actions in order to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of FFDCA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each Reregistration Eligibility Decision (RED) and Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications, to reflect current use patterns, to meet safety findings and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone number: 1–800–490–9198; fax number: 1–513–489–8695; Internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: 1–800–553–6847 or (703) 605–6000; Internet at *http://www.ntis.gov*. Electronic copies of REDs and TREDs are available on the Internet at *http://www.regulations.gov*

and *http://www.epa.gov/pesticides/reregistration/status.htm*.

In this final rule, EPA is revoking certain tolerances and/or tolerance exemptions because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA in the United States. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide active ingredient. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or legally treated domestic commodities.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

• Prior to EPA's issuance of a FFDCA section 408(f) order requesting additional data or issuance of a FFDCA section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

• EPA independently verifies that the tolerance is no longer needed.

• The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of December 31, 2008 (73 FR 80317), EPA received comments during the 60–day public comment period, as follows:

1. *General—comment by private citizen*. An anonymous comment was received which expressed concerns about pesticides on food and that only zero tolerance levels should be acceptable.

*Agency response*. The commenter did not take issue with any of the Agency's specific conclusions to modify, revoke, or establish certain tolerances. Also, the commenter did not refer to any specific studies which pertained to those conclusions. EPA believes that the tolerance actions finalized herein meet the safety standard of FFDCA section 408, 21 U.S.C. 346a. In developing REDs and TREDs, EPA worked with stakeholders, pesticide registrants, growers, and other pesticide users, environmental and public health interests, the States, the U.S. Department of Agriculture, other Federal agencies, and others to develop voluntary measures or regulatory controls needed to effectively reduce risks of concern. Such options include voluntary cancellation of pesticide products or deletion of uses, declaring certain uses ineligible or not yet eligible, restricting use of products to certified applicators, limiting the amount or frequency of use, improving use directions and precautions, adding more protective clothing and equipment requirements, requiring special packaging or engineering controls, requiring no-treatment buffer zones, employing environmental and ecological safeguards, and other measures.

2. *Azinphos-methyl*—i. *Comment by the Cranberry Institute*. The Cranberry Institute requested that the tolerance on cranberry be maintained until the planned Canadian phase-out in 2012, and the commenter also requested that a channels of trade date be made as 2014. The commenter stated that much of the Canadian cranberry crop is imported into the United States.

ii. *Comments by Argentina's Secretary of Agriculture and multiple growers organizations in Argentina, Chile, Mexico, and Uruguay*. The Secretary of Agriculture in Argentina requested that the U.S. tolerances for azinphos-methyl on apples, pears, and cherries not be revoked, but rather remain in place to maintain trade flows with the United States. The commenter stated that in 2008, Argentina exported 2 and 37 million kilograms of apples and pears, respectively, to the United States and that a diminished supply of apples and pears may raise costs for U.S. consumers. Also, the Secretary of Agriculture in Argentina stated that the azinphos-methyl tolerance revocations were not associated with dietary risks. Multiple commenters from agricultural organizations in Argentina and one grower organization from Uruguay also requested that the U.S. tolerances for azinphos-methyl on apples and pears not be revoked, but rather remain in place to maintain trade flows with the United States. Several of these commenters also stated that the azinphos-methyl tolerance revocations were not associated with dietary risks and that use of alternatives to azinphos-methyl would be costly to growers there and U.S. consumers.

iii. *Comment by Makhteshim Agan of North America, Inc. (MANA)*. The commenter, a manufacturer of azinphos-methyl, expressed concern that azinphos-methyl treated crops may be in channels of trade beyond last azinphos-methyl use dates. Also, MANA stated that the azinphos-methyl tolerance revocations were not associated with dietary risks. In addition, MANA stated that import tolerances may be necessary because in 2008, the United States imported 93 million kilograms of apples from Chile, 2 million kilograms of apples from Argentina, 25 million kilograms of pears from Chile, and 37 million kilograms of pears from Argentina, countries where azinphos-methyl is used to treat apples and pears. Furthermore, MANA stated that in 2006, the United States imported 40% of fruit, 15% of vegetables, and 18% of nuts and that a substantial number of crops have been treated with azinphos-methyl and expressed concern that tolerance revocation would discriminate against foreign food commodities for sale in the United States and internationally accepted scientific evidence in violation of the World Trade Organization's General Agreement on Tariffs and Trade (GATT) Articles III and III.3, against GATT Members in violation of GATT Articles II.2. and II.3, and Member standards in violation of GATT Article IV. Finally, MANA requested that the U.S. tolerances for azinphos-methyl on apples, almonds, almond hulls, blueberries, Brussels sprouts, cherries, crabapples, parsley leaves, parsley turnip roots, peaches, pistachios, and walnuts not be revoked, but rather remain in place to maintain trade flows with the United States.

iv. *Comment by the Association of Exporters of Chile (ASOEX)*. ASOEX, a non-governmental Chilean organization, stated that the Agency's proposal to revoke tolerances for azinphos-methyl on pome fruit, stone fruit, berries, and kiwifruit would be an unfair restriction on international trade, prohibited by GATT, and requested that the tolerances not be revoked.

*Agency response*. According to the revised Canadian phase-out schedule for azinphos-methyl, the last date for use of azinphos-methyl by users in Canada on

cranberries is December 31, 2012. In the **Federal Register** of December 31, 2008 (73 FR 80317)(FRL–8394–7), EPA proposed tolerance actions for several active ingredients including a proposal to revoke the tolerance for residues of azinphos-methyl on cranberry in 40 CFR 180.154 and, as described in Unit II.C. of that document, the revocation would become effective on the date of publication of the final rule. Because the Cranberry Institute has expressed a need for maintenance of the tolerance until the end of 2012 for import purposes, EPA is revoking the U.S. tolerance for residues of azinphos-methyl in 40 CFR 180.154 on cranberry at 0.5 ppm with an expiration/revocation date of December 31, 2012. Commodities treated with pesticides that are in the channels of trade following tolerance revocation are subject to FFDCA section 408(l)(5). Under this section, any residues of pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA and the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

Currently, there is no tolerance for azinphos-methyl residues in or on kiwifruit and kiwifruit was not addressed in the proposal of December 31, 2008 (73 FR 80317). Based on comments which expressed a need to retain specific tolerances for importation purposes into the United States, EPA will not revoke tolerances for residues of azinphos-methyl in or on almond; almond, hulls; apple; blackberry; blueberry; boysenberry; Brussels sprouts; cherry; crabapple; loganberry; parsley, leaves; parsley, turnip rooted, roots; peach; pear; pistachio; plum, prune; quince; raspberry; and walnut in 40 CFR 180.154 at this time. Therefore, any arguments regarding GATT are moot at this time. However, retaining these tolerances indefinitely will likely require submission of data to demonstrate their safety. EPA believes that residue data from foreign countries, and perhaps other data, will be needed to support import tolerances for azinphos-methyl. For example, domestic U.S. residue data are not likely to be representative of growing conditions and use patterns in other countries. EPA published guidances on pesticide import tolerances and residue data for imported food in the **Federal Register** notices of April 5, 2006 (71 FR 17099)(FRL–7772–1) and June 1, 2000 (65 FR 35069)(FRL–6559–3).

The Agency is revoking the following azinphos-methyl tolerances in 40 CFR 180.154, for which no commenter expressed a need: Alfalfa, forage; alfalfa, hay; bean, snap, succulent; broccoli; cabbage; cauliflower; celery; clover, forage; clover, hay; cotton, undelinted seed; cucumber; eggplant; fruit, citrus, group 10; grape; hazelnut; melon; onion; pecan; pepper; potato; spinach; strawberry; tomato, postharvest; trefoil, forage; and trefoil, hay. Also, the Agency is removing the expired tolerance in 40 CFR 180.154 on sugarcane, cane.

3. *Esfenvalerate—comment by DuPont Crop Protection*. DuPont Crop Protection stated that a tolerance of 1.0 ppm on succulent peas is appropriate for esfenvalerate, that the regional tolerance for okra at 0.1 ppm for esfenvalerate be retained because there is a pending IR-4 request to set okra as a national tolerance at 0.5 ppm based on existing pepper data, that the kohlrabi and head lettuce tolerances not be made regional tolerances because kohlrabi is not geographically restricted and DuPont expects to submit a label amendment which removes the geographical restriction on head lettuce for esfenvalerate. Also, DuPont requested that a national tolerance be established on pistachios at 0.1 ppm and a regional tolerance be established on cardoon at 1.0 ppm based on pending tolerance petitions (PP#7F4859 and PP#0E3912, respectively). In addition, DuPont notes that the Agency proposed revocation in 40 CFR 180.379(a)(3) for the tolerance on soybean hulls for fenvalerate and states that, using the conversion method, one should be established for esfenvalerate at 0.5 ppm.

*Agency response*. In the **Federal Register** of December 31, 2008 (73 FR 80317)(FRL–8394–7), EPA proposed to revoke the tolerances in 40 CFR 180.379(a) for residues of fenvalerate in or on pea at 1.0 ppm and pea, dry, seed at 0.25 ppm with expiration/revocation dates of April 2, 2010, and establish tolerances in 40 CFR 180.533(a)(1) for residues of esfenvalerate, its non-racemic isomer, and its diastereomers in or on pea, succulent at 0.5 ppm and pea, dry, seed at 0.25 ppm. Esfenvalerate is an enriched isomer of fenvalerate and bridging studies (field trial data) indicate that esfenvalerate residues are lower than fenvalerate residues. The Agency agreed that bridging data could satisfy registration requirements and used the tiered approach originally proposed by DuPont in tolerance petition PP#4F4329, which included that fenvalerate tolerances greater than or equal to 1.0 ppm but less than or equal to 2.0 ppm, should be divided by 2 in a conversion to esfenvalerate tolerances for certain crop commodities, including peas, where the Agency recommended a tolerance of 0.5 ppm in or on succulent pea. Therefore, because the Agency considers that to be the appropriate tolerance, EPA is establishing the tolerance on pea, succulent in 40 CFR 180.533(a)(1) at 0.5 ppm.

The supporting data for the tolerance on kohlrabi comes from two field trials in Texas. However, in Table 1 of guideline 860.1500 for crop field trials, available at *http:/www.epa.gov/opptsfrs/publications/OPPTS_Harmonized/860_Residue_Chemistry_Test_Guidelines/Series/860-1500.pdf*, the minimum number of crop field trials for kohlrabi is listed to be three. In addition, when the Agency reviewed the 1996 petition, it determined at that time that the labels should bear directions for kohlrabi grown in Texas only. Therefore, the available data do not support a national (non-geographically restricted) tolerance for esfenvalerate. Consequently, EPA is recodifying the tolerance for kohlrabi at 2.0 ppm from 40 CFR 180.533(a) into 40 CFR 180.533(c) as a regional tolerance. If the commenter has any additional information to provide on this issue, it should submit it to the Agency for consideration.

Because the available data that the Agency has reviewed and approved supports a regional tolerance for head lettuce, EPA is recodifying the tolerance for lettuce, head at 5.0 ppm from 40 CFR 180.533(a) into 40 CFR 180.533(c) as a regional tolerance. Should the commenter submit additional information, the Agency will consider it and take any appropriate actions.

Regarding tolerance petition PP#6E7096, which proposed a tolerance on okra, the Agency notes that the petitioner needs to submit revised Sections B and F of the petition. See guidelines 860.1200 *(http:/www.epa.gov/opptsfrs/publications/OPPTS_Harmonized/860_Residue_Chemistry_Test_Guidelines/Series/860-1200.pdf) and 860.1550 (http:/www.epa.gov/opptsfrs/publications/OPPTS_Harmonized/860_Residue_Chemistry_Test_Guidelines/Series/860-1550.pdf)*, respectively, available at *http:/www.epa.gov/opptsfrs/home/guidelin.htm*. However, due to an existing regional tolerance for

fenvalerate on okra and EPA's proposed establishment of tolerances in 40 CFR 180.533(a) for esfenvalerate residues of concern in or on pepper and tomato (whose bridging data the Agency determined can be translated to okra) at 0.5 ppm, the Agency agrees that the tolerance on okra should be established for esfenvalerate at this time. This is consistent with the Agency's proposal published on December 31, 2008 (73 FR 80317) to convert tolerances for fenvalerate to esfenvalerate. Therefore, EPA is establishing a permanent tolerance in 40 CFR 180.533(a)(1) for esfenvalerate residues of concern in or on okra at 0.5 ppm. Also, the Agency notes that label revisions are required to specify a maximum seasonal application rate of 0.5 lb active ingredient/Acre (ai/A) for okra. Petition PP#0E3912, which proposed a tolerance for cardoon, proposed the tolerance in terms of fenvalerate and the petitioner needs to submit a revised Section F to request a tolerance for esfenvalerate. Regarding tolerance petition PP#7F4859, which proposed a tolerance on pistachio, the petitioner needs to submit a revised Section F to correct the tolerance expression and the commodity name. Consequently, after the Agency receives each revised Section F, the Agency expects to address cardoon and pistachio in a future publication in the **Federal Register**.

The April 2006, Residue Chemistry Chapter for esfenvalerate, posted in the docket of the proposed rule of December 31, 2008 (73 FR 80317), noted that the Agency would allow conversion of the established fenvalerate tolerance on soybean (seed) to esfenvalerate. However, it did not mention establishing an esfenvalerate tolerance for soybean hulls. Instead, it inadvertently recommended retaining the fenvalerate tolerance on soybean hulls for import purposes instead of revocation concomitant with the establishment of that tolerance for esfenvalerate based on available bridging data. Typically, the Agency provides for public comment, including requests to maintain tolerances for import purposes, in its publication in the **Federal Register** of a proposed tolerance revocation. No public comments were received by the Agency during the 60–day comment period provided by the proposed rule of December 31, 2008 (73 FR 80317) regarding a request to maintain any fenvalerate tolerances for import purposes. The Agency agrees with DuPont that bridging residue comparison data on soybean hulls are available. According to the April 2006 Residue Chemistry Chapter, fenvalerate residues concentrated approximately 20X in soybean hulls, and with a soybean seed tolerance of 0.05 ppm an appropriate fenvalerate tolerance on soybean hulls is calculated by the Agency to be 1.0 ppm. An expected fenvalerate tolerance level of 1.0 ppm should be divided by 2 for esfenvalerate conversion, so that the Agency believes that a tolerance on soybean, hulls at 0.5 ppm should be established for esfenvalerate at this time. This is consistent with the Agency's proposal published on December 31, 2008 (73 FR 80317) to convert tolerances for fenvalerate to esfenvalerate. Therefore, EPA is establishing a tolerance in 40 CFR 180.533(a)(1) on soybean, hulls at 0.5 ppm.

EPA did not propose in a notice for comment to revise the tolerance nomenclature for esfenvalerate in 40 CFR 180.533(a)(1) from sorghum, forage to sorghum, grain, forage, and turnip, tops to turnip, greens is current Agency practice. However, section 553(b)(3)(B) of the Administrative Procedure Act provides that notice and comment is not necessary ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Consequently, for good cause, EPA is revising the tolerance terminology in 40 CFR 180.533(a)(1) from sorghum, forage to sorghum, grain, forage, and turnip, tops to turnip, greens. The reason for taking this action is because such action has no practical impact on the use of or exposure to the pesticide active ingredient, esfenvalerate, in or on that commodity and is made such that the tolerance terminology will conform to current Agency practice.

Consequently, in addition to the establishment of tolerances on okra and soybean, hulls, and the revising of the tolerance nomenclature for sorghum, forage to sorghum, grain, forage, the Agency is finalizing all other amendments proposed concerning esfenvalerate in the **Federal Register** of December 31, 2008 (73 FR 80317).

4. *Ethylene oxide (ETO)—comments by the American Spice Trade Association (ASTA) and Cosmed Group, Inc.*. The commenters, McDermott, Will, and Emery on behalf of ASTA, and the Cosmed Group, Inc., expressed concern that while they are not objecting to the exclusion of basil, the replacement of ethylene oxide tolerances for ''whole spices'' and ''ground spices'' in 40 CFR 180.151(a) with ''herb and spice, group 19, dried, except basil'' and ''vegetable, dried'' may not be as comprehensive as the existing tolerances. Also, the commenters provided a list of spices. In addition, McDermott, Will, and Emery on behalf of ASTA, stated that there has been some difficulty in meeting the proposed tolerance value for the reaction product, 2-chloroethanol, commonly referred to as ethylene chlorohydrin (ECH), and that some of ASTA's members need additional time to address application steps to help assure that the tolerance proposal for ECH tolerances can be met. Therefore, ASTA is requesting that the finalization of the ECH tolerances not be made effective before August 31, 2009.

*Agency response*. Certain spices depicted in ASTA's list (Capsicums, ginger, horseradish, paprika, garlic, onion, turmeric, and arrowroot) are covered by the proposed tolerances on ''vegetable, dried.'' Camomile (German or Hungarian) is covered by camomile; oregano is covered by the preferred term marjoram, and pink peppercorns is covered by black pepper within the proposed tolerance on ''herb and spice, group 19, dried, except basil.'' However, there are four commodities (licorice roots, peppermint and spearmint leaves, and sesame seeds) cited by ASTA and Cosmed that are not currently covered by proposed tolerances for ''vegetable, dried'' or ''herb and spice, group 19, dried, except basil.'' In the future, the Agency may revise crop groupings (e.g., the Agency may consider the addition of licorice roots into vegetable, root and tuber, group 1, which would then cover licorice roots as a spice under vegetable, dried). At this time, the Agency determined that addition of individual tolerances for these four commodities at 7 ppm for ethylene oxide residues and 940 ppm for ethylene chlorohydrin residues does not significantly affect the dietary risk assessment. Therefore, EPA is establishing tolerances in 40 CFR 180.151(a)(1) for residues of the antimicrobial agent and insecticide ethylene oxide, when used as a postharvest fumigant, in or on licorice, roots; peppermint, tops, dried; spearmint, tops, dried; and sesame, seed; each at 7 ppm and in 40 CFR 180.151(a)(2) for residues of the ethylene oxide reaction product, 2-chloroethanol, commonly referred to as ethylene chlorohydrin, when ethylene oxide is used as a postharvest fumigant, in or on licorice, roots; peppermint, tops, dried; spearmint, tops, dried; and sesame, seed; each at 940 ppm. Also, the Agency expects to publish this final rule in September 2009, which is consistent with ASTA's request that tolerances for

ethylene chlorohydrin not be made effective before August 31, 2009.

Consequently, in addition to the establishment of tolerances for both ethylene oxide and ethylene chlorohydrin on licorice, roots; peppermint, tops, dried; spearmint, tops, dried; and sesame, seed, the Agency is finalizing all other amendments proposed concerning ethylene oxide and ethylene chlorohydrin in the **Federal Register** of December 31, 2008 (73 FR 80317).

5. *1-Naphthaleneacetic acid, salts, ethyl ester, and acetamide—comments by the Northwest Horticultural Council (NHC) and AMVAC Chemical Corporation*. The NHC expressed a concern about the proposed tolerance decreases on apple, pear, and quince from 1.0 to 0.1 ppm (revised into fruit, pome, group 11) because the registrant suggested that when conducting field trials using two applications at 50 g per acre, residues of up to 0.094 ppm resulted, and stated that residues may be dependent on time of year and variety of apple or pear being treated. Also, the NHC stated that, in the 2007 revised RED, the modified label language for potassium salt formulation and the number of applications allowed each year is not clear; i.e., it appears to limit use to one or two applications. AMVAC stated that residues on apples and pears in one study were as high as 0.093 ppm and 0.086 ppm, respectively, and requested that the tolerances on apples and pears be maintained at 1.0 ppm.

*Agency response*. NHC's and AMVAC's citation of residues on apples as high as 0.093 ppm (MRID 45283601) represented samples from one of four site locations with a 2–day pre-harvest interval (PHI). AMVAC's citation of residues on pears as high as 0.086 ppm (MRID 45283602) represented samples with a 1–day PHI. Half-life for 1-naphthaleneacetic acid (NAA) residues on apples and pears under field conditions from these studies were determined to be 4.8 days and 1.9 days, respectively. Residues at a PHI of 2 days were as high as 0.0455 ppm on pears. The recommendation in the RED for a group tolerance of 0.1 ppm on pome fruit cited detectable residues for apple and pear that were below 0.1 ppm following sequential treatments at rates approximating the maximum label use patterns. The March 2004 Residue Chemistry Chapter for NAA cited residues at 5 days following the last sequential treatment as high as 0.06 ppm for apples (MRID 40884401) and 0.03 ppm for pears (MRID 40884402) and at 2–day PHIs as 0.093 ppm for apples (MRID 45283601) and 0.075 ppm for pears (MRID 45283602). The Agency notes that the degradation of NAA may result in variable residue levels with environmental variables such as seasonality and temperature as well as with early/late season apple/pear varieties. If such data are submitted, EPA will further evaluate appropriate tolerance levels. Currently, in response to comments from NHC and AMVAC, the Agency put residue levels for apples and pears, representing the 2–day PHI, into the NAFTA MRL Calculator, a statistical procedure for tolerance assessment, and determined that based on the variability of the residue data and a 99% confidence limit, a tolerance level of 0.15 ppm is appropriate; i.e., the tolerance on pome fruit should be increased above the proposed level of 0.1 ppm to 0.15 ppm. Consequently, the Agency is decreasing the tolerances on apple, pear, and quince to 0.15 ppm and revising them into a crop group tolerance in 40 CFR 180.155(a) on fruit, pome, group 11 at 0.15 ppm. EPA has determined that this tolerance is safe.

The Agency agrees that Appendix A in the RED summarizes use patterns at the time of the RED that were eligible for registration for potassium 1-naphthaleneacetate, whose labels needed to be changed as per the RED, with amended language to specify a maximum single application rate as 0.11 pound of acid equivalents per acre (lb ae/A), (except for olive trees only at 0.33 lb ae/A), a maximum rate for all uses per year or crop cycle as 0.33 lb ae/A, a minimum re-treatment interval between applications of 5 days and re-entry intervals (REIs) of 12 hours for the ethyl ester and 48 hours for the acid, potassium salt, ammonium salt, sodium salt and acetamide forms. Any discrepancies in the use profile will be evaluated by the Agency and, if needed, corrected.

In addition to the establishment of the tolerance on fruit, pome, group 11 at 0.15 ppm, the Agency is finalizing all other amendments proposed concerning 1-naphthaleneacetic acid, salts, ethyl ester, and acetamide in the **Federal Register** of December 31, 2008 (73 FR 80317).

In addition, the Agency is making the following revision in this final rule.

6. *Disulfoton*. EPA did not propose in a notice for comment to revise the tolerance nomenclature for disulfoton, *O,O*-diethyl *S*-[2-(ethylthio)ethyl] phosphorodithioate, in 40 CFR 180.183(a) from coffee, bean to coffee, green bean, as is current Agency practice. However, section 553(b)(3)(B) of the Administrative Procedure Act provides that notice and comment is not necessary ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Consequently, for good cause, EPA is revising the tolerance terminology in 40 CFR 180.183(a) from coffee, bean to coffee, green bean. The reason for taking this action is because such action has no practical impact on the use of or exposure to the pesticide active ingredient, disulfoton, in or on that commodity and is made such that the tolerance terminology will conform to current Agency practice.

The Agency did not receive any specific comments on the following pesticide active ingredients: Disulfoton, fenvalerate, phosalone, phosmet, primisulfuron-methyl, prothioconazole, and thiabendazole. Therefore, in addition to revising the tolerance nomenclature for coffee, bean to coffee, green bean for disulfoton, EPA is finalizing the amendments proposed concerning these active ingredients in the **Federal Register** of December 31, 2008 (73 FR 80317). For a detailed discussion of the Agency's rationale for the establishments, revocations, and modifications to the tolerances, refer to the proposed rule of December 31, 2008.

### *B. What is the Agency's Authority for Taking this Action?*

EPA may issue a regulation establishing, modifying, or revoking a tolerance under FFDCA section 408(e). In this final rule, EPA is establishing, modifying, and revoking tolerances to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes, and as follow-up on canceled uses of pesticides. As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under FFDCA. The safety finding determination is found in detail in each post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued REDs for azinphos-methyl, disulfoton, 1-naphthaleneacetic acid, phosmet, and thiabendazole and TREDs for ethylene oxide and primisulfuron methyl. REDs and TREDs contain the Agency's evaluation of the

database for these pesticides, including statements regarding additional data on the active ingredients that may be needed to confirm the potential human health and environmental risk assessments associated with current product uses, and REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FFDCA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are made final in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, the Agency gives consideration to possible pesticide residues in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, then tolerances do not need to be established for these commodities (40 CFR 180.6(b) and 180.6(c)).

### *C. When Do These Actions Become Effective?*

With the exception of certain tolerances for azinphos-methyl, disulfoton, fenvalerate, phosalone, and thiabendazole for which EPA is revoking with specific expiration/revocation dates, the Agency is revoking, modifying, and establishing specific tolerances, and revising specific commodity terminologies effective on the date of publication of this final rule in the **Federal Register**. With the exception of the specific tolerances for azinphos-methyl, disulfoton, fenvalerate, phosalone, and thiabendazole, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the revoked tolerances have been completely exhausted and that treated commodities have had sufficient time for passage through the channels of trade. EPA is revoking certain specific tolerances with expiration/revocation dates of December 31, 2012 for the azinphos-methyl tolerance on cranberry; October 14, 2009 for disulfoton tolerances on spinach and tomato; January 30, 2010 for disulfoton tolerances on barley, grain; barley, straw; grain, aspirated fractions; peanut; pepper; potato; wheat, hay; wheat, grain; wheat, straw; milk; and the fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep; April 2, 2010 for most of the fenvalerate tolerances; September 30, 2013 for phosalone tolerances on apple; cherry; grape; peach; pear; and plum, prune, fresh; and December 25, 2010 for thiabendazole tolerances on beet, sugar, dried pulp; beet, sugar, roots; and beet, sugar, tops. The Agency believes that these revocation dates allow users to exhaust stocks and allow sufficient time for passage of treated commodities through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by FQPA. Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

## III. Are There Any International Trade Issues Raised by this Final Action?

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international Maximum Residue Limits (MRLs) established by the Codex Alimentarius Commission, as required by section 408(b)(4) of FFDCA. The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level in a notice published for public comment. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs and TREDs, and in the Residue Chemistry document which supports the RED and TRED, as mentioned in the proposed rule cited in Unit II.A. Specific tolerance actions in this rule and how they compare to Codex MRLs (if any) is discussed in Unit II.A.

## IV. Statutory and Executive Order Reviews

In this final rule, EPA establishes tolerances under FFDCA section 408(e), and also modifies and revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public

Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020) (FRL–5753–1), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of the proposed rule, as mentioned in Unit II.A.). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

## V. Congressional Review Act

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

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 27, 2009.

**Debra Edwards,**

*Director, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

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

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

### § 180.3 [Amended]

■ 2. Section 180.3 is amended by removing paragraph (d)(7) and redesignating paragraphs (d)(8) through (d)(13) as paragraphs (d)(7) through (d)(12), respectively.

■ 3. Section 180.151 is amended by revising the table in paragraph (a)(1) and by revising paragraph (a)(2) to read as follows:

### §180.151 Ethylene oxide; tolerances for residues.

(a) * * * (1) * * *

| Commodity | Parts per million |
|---|---|
| Herb and spice, group 19, dried, except basil | 7 |
| Licorice, roots | 7 |
| Peppermint, tops, dried | 7 |
| Sesame, seed | 7 |
| Spearmint, tops, dried | 7 |
| Vegetable, dried | 7 |
| Walnut | 50 |

(2) Tolerances are established for residues of the ethylene oxide reaction product, 2-chloroethanol, commonly referred to as ethylene chlorohydrin, when ethylene oxide is used as a postharvest fumigant in or on food commodities as follows:

| Commodity | Parts per million |
|---|---|
| Herb and spice, group 19, dried, except basil | 940 |
| Licorice, roots | 940 |
| Peppermint, tops, dried | 940 |
| Sesame, seed | 940 |
| Spearmint, tops, dried | 940 |

| Commodity | Parts per million |
|---|---|
| Vegetable, dried | 940 |

* * * * *

■ 4. Section 180.154 is amended by revising the section heading and the table in paragraph (a) to read as follows:

**§180.154 Azinphos-methyl; tolerances for residues.**

(a) * * *

| Commodity | Parts per million | Expiration/ Revocation Date |
|---|---|---|
| Almond[1] | 0.2 | None |
| Almond, hulls[1] | 5.0 | None |
| Apple[2] | 1.5 | None |
| Blackberry[3] | 2.0 | None |
| Blueberry[2] | 5.0 | None |
| Boysenberry[3] | 2.0 | None |
| Brussels sprouts[4] | 2.0 | None |
| Cherry[2] | 2.0 | None |
| Crabapple[2] | 1.5 | None |
| Cranberry[3] | 0.5 | 12/31/12 |
| Loganberry[3] | 2.0 | None |
| Parsley, leaves[2] | 5.0 | None |
| Parsley, turnip rooted, roots[2] | 2.0 | None |
| Peach[3] | 2.0 | None |
| Pear[2] | 1.5 | None |
| Pistachio[1] | 0.3 | None |
| Plum, prune[5] | 2.0 | None |
| Quince[5] | 1.5 | None |
| Raspberry[3] | 2.0 | None |
| Walnut[1] | 0.3 | None |

[1]There are no U.S. registrations as of October 30, 2009.

[2]There are no U.S. registrations as of September 30, 2012.

[3]There are no U.S. registrations since September 30, 2006.

[4]There are no U.S. registrations since September 30, 2008.

[5]There are no U.S. registrations since December 28, 2005.

* * * * *

■ 5. Section 180.155 is revised to read as follows:

**§ 180.155 1-Naphthaleneacetic acid; tolerances for residues.**

(a) *General.* Tolerances are established for the combined residues of the plant growth regulator 1-naphthaleneacetic acid and its conjugates calculated as 1-naphthaleneacetic acid from the application of 1-naphthaleneacetic acid, its ammonium, sodium, or potassium salts, ethyl ester, and acetamide in or on food commodities as follows:

| Commodity | Parts per million |
|---|---|
| Cherry, sweet | 0.1 |
| Fruit, pome, group 11 | 0.15 |
| Olive | 0.7 |
| Orange | 0.1 |
| Pineapple[1] | 0.05 |
| Tangerine | 0.1 |

[1] There are no U.S. registrations since 1988.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

■ 6. Section 180.183 is amended by revising paragraph (a) and paragraph (c) to read as follows:

**§180.183 *O,O*-Diethyl *S*-[2-(ethylthio)ethyl] phosphorodithioate; tolerances for residues.**

(a) *General.* Tolerances are established for the combined residues of the insecticide disulfoton, *O,O*-diethyl *S*-[2-(ethylthio)ethyl] phosphorodithioate; demeton-*S*, *O,O*-diethyl *S*-[2-(ethylthio)ethyl] phosphorothioate; disulfoton sulfoxide, *O,O*-diethyl *S*-[2-(ethylsulfinyl)ethyl] phosphorodithioate; disulfoton oxygen analog sulfoxide, *O,O*-diethyl *S*-[2-(ethylsulfinyl)ethyl] phosphorothioate; disulfoton sulfone, *O,O*-diethyl *S*-[2-(ethylsulfonyl)ethyl] phosphorodithioate; and disulfoton oxygen analog sulfone, *O,O*-diethyl *S*-[2-(ethylsulfonyl)ethyl] phosphorothioate; calculated as disulfoton, in or on food commodities as follows:

| Commodity | Parts per million | Expiration/ Revocation Date |
|---|---|---|
| Barley, grain | 0.2 | 1/30/10 |
| Barley, straw | 5.0 | 1/30/10 |
| Bean, lima | 0.75 | None |
| Bean, snap, succulent | 0.75 | None |
| Broccoli | 0.75 | None |
| Brussels sprouts | 0.75 | None |
| Cabbage | 0.75 | None |
| Cattle, fat | 0.05 | 1/30/10 |
| Cattle, meat | 0.05 | 1/30/10 |
| Cattle, meat by-products | 0.05 | 1/30/10 |
| Cauliflower | 0.75 | None |
| Coffee, green bean | 0.2 | None |
| Cotton, undelinted seed | 0.75 | None |
| Goat, fat | 0.05 | 1/30/10 |
| Goat, meat | 0.05 | 1/30/10 |
| Goat, meat byproducts | 0.05 | 1/30/10 |
| Grain, aspirated fractions | 0.3 | 1/30/10 |
| Hog, fat | 0.05 | 1/30/10 |
| Hog, meat | 0.05 | 1/30/10 |
| Hog, meat byproducts | 0.05 | 1/30/10 |
| Horse, fat | 0.05 | 1/30/10 |
| Horse, meat | 0.05 | 1/30/10 |
| Horse, meat by-products | 0.05 | 1/30/10 |
| Lettuce, head | 0.75 | None |
| Lettuce, leaf | 2 | None |
| Milk | 0.01 | 1/30/10 |
| Peanut | 0.1 | 1/30/10 |
| Pepper | 0.1 | 1/30/10 |
| Potato | 0.5 | 1/30/10 |
| Sheep, fat | 0.05 | 1/30/10 |
| Sheep, meat | 0.05 | 1/30/10 |
| Sheep, meat by-products | 0.05 | 1/30/10 |
| Spinach | 0.75 | 10/14/09 |
| Tomato | 0.75 | 10/14/09 |
| Wheat, grain | 0.2 | 1/30/10 |
| Wheat, hay | 5.0 | 1/30/10 |
| Wheat, straw | 5.0 | 1/30/10 |

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for the combined residues of the insecticide disulfoton, *O,O*-diethyl *S*-[2-(ethylthio)ethyl] phosphorodithioate; demeton-*S*, *O,O*-diethyl *S*-[2-(ethylthio)ethyl] phosphorothioate; disulfoton sulfoxide, *O,O*-diethyl *S*-[2-(ethylsulfinyl)ethyl] phosphorodithioate; disulfoton oxygen analog sulfoxide, *O,O*-diethyl *S*-[2-(ethylsulfinyl)ethyl] phosphorothioate; disulfoton sulfone, *O,O*-diethyl *S*-[2-(ethylsulfonyl)ethyl] phosphorodithioate; and disulfoton oxygen analog sulfone, *O,O*-diethyl *S*-[2-(ethylsulfonyl)ethyl] phosphorothioate; calculated as disulfoton, in or on food commodities as follows:

| Commodity | Parts per million |
|---|---|
| Asparagus | 0.1 |

* * * * *

■ 7. Section 180.242 is amended by revising the table in paragraph (a)(1) to read as follows:

**§180.242 Thiabendazole; tolerances for residues.**

(a) * * * (1) * * *

| Commodity | Parts per million | Expiration/ Revocation Date |
|---|---|---|
| Apple, wet pomace | 12.0 | None |
| Avocado[1] | 10.0 | None |
| Banana, postharvest | 3.0 | None |
| Bean, dry, seed | 0.1 | None |
| Beet, sugar, dried pulp | 3.5 | 12/25/10 |
| Beet, sugar, roots | 0.25 | 12/25/10 |
| Beet, sugar, tops | 10.0 | 12/25/10 |

| Commodity | Parts per million | Expiration/ Revocation Date |
|---|---|---|
| Cantaloupe[1] | 15.0 | None |
| Carrot, roots, postharvest | 10.0 | None |
| Citrus, oil | 15.0 | None |
| Fruit, citrus, group 10, postharvest | 10.0 | None |
| Fruit, pome, group 11, postharvest | 5.0 | None |
| Mango | 10.0 | None |
| Mushroom | 40.0 | None |
| Papaya, postharvest | 5.0 | None |
| Potato, postharvest | 10.0 | None |
| Soybean | 0.1 | None |
| Strawberry[1] | 5.0 | None |
| Sweet potato (postharvest to sweet potato intended only for use as seed) | 0.05 | None |
| Wheat, grain | 1.0 | None |
| Wheat, straw | 1.0 | None |

[1]There are no U.S. registrations on the indicated commodity.

* * * * *

■ 8. Section 180.261 is amended by revising the table in paragraph (a) to read as follows:

**§180.261 *N*-Mercaptomethyl phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) and its oxygen analog; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| Alfalfa, forage | 20 |
| Alfalfa, hay | 40 |
| Almond, hulls | 10 |
| Apple | 10 |
| Apricot | 5 |
| Blueberry | 10 |
| Cattle, fat | 0.2 |
| Cattle, meat | 0.1 |
| Cattle, meat byproducts | 0.1 |
| Cherry | 10 |
| Cotton, refined oil | 0.2 |
| Cotton, undelinted seed | 0.1 |
| Cranberry | 10 |
| Fruit, citrus, group 10 | 5 |
| Goat, fat | 0.1 |
| Goat, meat | 0.1 |
| Goat, meat byproducts | 0.1 |
| Grape | 10 |
| Hog, fat | 0.2 |
| Hog, meat | 0.04 |
| Hog, meat byproducts | 0.04 |
| Horse, fat | 0.1 |
| Horse, meat | 0.1 |
| Horse, meat byproducts | 0.1 |
| Kiwifruit | 25 |
| Milk | 0.1 |
| Nectarine | 5 |
| Nut, tree, group 14 | 0.1 |
| Pea, dry, seed | 0.5 |
| Pea, field, hay | 20 |
| Pea, field, vines | 10 |
| Pea, succulent | 1 |
| Peach | 10 |
| Pear | 10 |
| Plum, prune, fresh | 5 |
| Potato | 0.1 |
| Sheep, fat | 0.1 |
| Sheep, meat | 0.1 |
| Sheep, meat byproducts | 0.1 |
| Sweet potato, roots | 12 |

* * * * *

■ 9. Section 180.263 is revised to read as follows:

**§180.263 Phosalone; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the insecticide phosalone, *S*-(6-chloro-3-(mercaptomethyl)-2-benzoxazolinone) *O,O*-diethyl phosphorodithioate, in or on the following food commodities:

| Commodity | Parts per million | Expiration/ Revocation Date |
|---|---|---|
| Apple[1] | 10.0 | 9/30/13 |
| Cherry[1] | 15.0 | 9/30/13 |
| Grape[1] | 10.0 | 9/30/13 |
| Peach[1] | 15.0 | 9/30/13 |
| Pear[1] | 10.0 | 9/30/13 |
| Plum, prune, fresh[1] | 15.0 | 9/30/13 |

[1] There are no U.S. registrations since 1992.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

**§ 180.309 [Removed]**

■ 10. Section 180.309 is removed.

■ 11. Section 180.379 is revised to read as follows:

**§180.379 Fenvalerate; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the insecticide fenvalerate, cyano(3-phenoxyphenyl)methyl-4-chloro-α-(1-methylethyl)benzeneacetate, in or on food commodities as follows:

| Commodity | Parts per million | Expiration/ Revocation Date |
|---|---|---|
| Almond | 0.2 | 4/2/10 |
| Almond, hulls | 15.0 | 4/2/10 |
| Apple | 2.0 | 4/2/10 |
| Artichoke, globe | 0.2 | 4/2/10 |
| Bean, dry, seed | 0.25 | 4/2/10 |
| Bean, snap, succulent | 2.0 | 4/2/10 |
| Broccoli | 2.0 | 4/2/10 |
| Blueberry | 3.0 | 4/2/10 |
| Cabbage | 10.0 | 4/2/10 |
| Caneberry subgroup 13A | 3.0 | 4/2/10 |
| Cantaloupe | 1.0 | 4/2/10 |
| Carrot, roots | 0.5 | 4/2/10 |
| Cattle, fat | 1.5 | 4/2/10 |
| Cattle, meat | 1.5 | 4/2/10 |
| Cattle, meat byproducts | 1.5 | 4/2/10 |
| Cauliflower | 0.5 | 4/2/10 |
| Collards | 10.0 | 4/2/10 |
| Corn, field, forage | 50.0 | 4/2/10 |
| Corn, field, grain | 0.02 | 4/2/10 |
| Corn, field, stover | 50.0 | 4/2/10 |
| Corn, pop, grain | 0.02 | 4/2/10 |
| Corn, pop, stover | 50.0 | 4/2/10 |
| Corn, sweet, forage | 50.0 | 4/2/10 |
| Corn, sweet, kernel plus cob with husks removed | 0.1 | 4/2/10 |
| Corn, sweet, stover | 50.0 | 4/2/10 |
| Cotton, undelinted seed | 0.2 | 4/2/10 |
| Cucumber | 0.5 | 4/2/10 |
| Currant | 3.0 | 4/2/10 |
| Eggplant | 1.0 | 4/2/10 |
| Elderberry | 3.0 | 4/2/10 |
| Fruit, stone, group 12 | 10.0 | 4/2/10 |
| Goat, fat | 1.5 | 4/2/10 |
| Goat, meat | 1.5 | 4/2/10 |
| Goat, meat byproducts | 1.5 | 4/2/10 |
| Gooseberry | 3.0 | 4/2/10 |
| Hazelnut | 0.2 | 4/2/10 |
| Hog, fat | 1.5 | 4/2/10 |
| Hog, meat | 1.5 | 4/2/10 |
| Hog, meat byproducts | 1.5 | 4/2/10 |
| Horse, fat | 1.5 | 4/2/10 |
| Horse, meat | 1.5 | 4/2/10 |
| Horse, meat byproducts | 1.5 | 4/2/10 |
| Huckleberry | 3.0 | 4/2/10 |
| Melon, honeydew | 1.0 | 4/2/10 |
| Milk | 0.3 | 4/2/10 |
| Milk, fat | 7.0 | 4/2/10 |
| Muskmelon | 1.0 | 4/2/10 |
| Pea | 1.0 | 4/2/10 |
| Pea, dry, seed | 0.25 | 4/2/10 |
| Peanut | 0.02 | 4/2/10 |
| Pear | 2.0 | 4/2/10 |
| Pecan | 0.2 | 4/2/10 |
| Pepper | 1.0 | 4/2/10 |
| Potato | 0.02 | 4/2/10 |
| Pumpkin | 1.0 | 4/2/10 |
| Radish, roots | 0.3 | 4/2/10 |
| Radish, tops | 8.0 | 4/2/10 |
| Sheep, fat | 1.5 | 4/2/10 |
| Sheep, meat | 1.5 | 4/2/10 |
| Sheep, meat byproducts | 1.5 | 4/2/10 |
| Soybean, seed | 0.05 | 4/2/10 |
| Squash, summer | 0.5 | 4/2/10 |
| Squash, winter | 1.0 | 4/2/10 |
| Sugarcane, cane | 2.0 | 4/2/10 |
| Sunflower, seed | 1.0 | 4/2/10 |
| Tomato | 1.0 | 4/2/10 |
| Turnip, roots | 0.5 | 4/2/10 |
| Turnip, tops | 20.0 | 4/2/10 |
| Walnut | 0.2 | 4/2/10 |
| Watermelon | 1.0 | 4/2/10 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

**§ 180.452 [Amended]**

■ 12. Section 180.452 is amended by removing from the table in paragraph (a) the entry ''corn, sweet, kernel plus cob with husks removed.''

■ 13. Section 180.533 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§180.533 Esfenvalerate; tolerances for residues.**

(a) *General.* (1) Tolerances are established for the combined residues of the insecticide esfenvalerate, (*S*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-α-(1-methylethyl)benzeneacetate, its non-racemic isomer, (*R*)-cyano(3-phenoxyphenyl)methyl-(*R*)-4-chloro-α-(1-methylethyl)benzeneacetate and its diastereomers (*S*)-cyano(3-phenoxyphenyl)methyl-(*R*)-4-chloro-α-(1-methylethyl)benzeneacetate and (*R*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-α-(1-methylethyl)benzeneacetate, in or on food commodities as follows:

| Commodity | Parts per million |
|---|---|
| Almond | 0.2 |
| Almond, hulls | 5.0 |
| Apple | 1.0 |
| Artichoke, globe | 1.0 |
| Bean, dry, seed | 0.25 |
| Bean, snap, succulent | 1.0 |
| Beet, sugar, roots | 0.05 |
| Beet, sugar, tops | 5.0 |
| Blueberry | 1.0 |
| Broccoli | 1.0 |
| Cabbage, except Chinese cabbage | 3.0 |
| Caneberry subgroup 13A | 1.0 |
| Cantaloupe | 0.5 |
| Carrot, roots | 0.5 |
| Cattle, fat | 1.5 |
| Cattle, meat | 1.5 |
| Cattle, meat byproducts | 1.5 |
| Cauliflower | 0.5 |
| Collards | 3.0 |
| Corn, field, forage | 15.0 |
| Corn, field, grain | 0.02 |
| Corn, field, stover | 15.0 |
| Corn, pop, grain | 0.02 |
| Corn, pop, stover | 15.0 |
| Corn, sweet, forage | 15.0 |
| Corn, sweet, kernel plus cob with husks removed | 0.1 |
| Corn, sweet, stover | 15.0 |
| Cotton, undelinted seed | 0.2 |
| Cucumber | 0.5 |
| Egg | 0.03 |
| Eggplant | 0.5 |
| Elderberry | 1.0 |
| Fruit, stone, group 12 | 3.0 |
| Goat, fat | 1.5 |
| Goat, meat | 1.5 |
| Goat, meat byproducts | 1.5 |
| Gooseberry | 1.0 |
| Hazelnut | 0.2 |
| Hog, fat | 1.5 |
| Hog, meat | 1.5 |
| Hog, meat byproducts | 1.5 |
| Horse, fat | 1.5 |
| Horse, meat | 1.5 |
| Horse, meat byproducts | 1.5 |
| Kiwifruit | 0.5 |
| Lentil, seed | 0.25 |
| Melon, honeydew | 0.5 |
| Milk | 0.3 |
| Milk, fat | 7.0 |
| Muskmelon | 0.5 |
| Mustard greens | 5.0 |
| Okra | 0.5 |
| Pea, dry, seed | 0.25 |
| Pea, succulent | 0.5 |
| Peanut | 0.02 |
| Pear | 1.0 |
| Pecan | 0.2 |
| Pepper | 0.5 |
| Potato | 0.02 |
| Poultry, fat | 0.3 |
| Poultry, liver | 0.03 |
| Poultry, meat | 0.03 |
| Poultry, meat byproducts, except liver | 0.3 |
| Pumpkin | 0.5 |
| Radish, roots | 0.3 |
| Radish, tops | 3.0 |
| Sheep, fat | 1.5 |
| Sheep, meat | 1.5 |
| Sheep, meat byproducts | 1.5 |
| Sorghum, grain, forage | 10.0 |
| Sorghum, grain, grain | 5.0 |
| Sorghum, grain, stover | 10.0 |
| Soybean, hulls | 0.5 |
| Soybean, seed | 0.05 |
| Squash, summer | 0.5 |
| Squash, winter | 0.5 |
| Sugarcane, cane | 1.0 |
| Sunflower, seed | 0.5 |
| Sweet potato, roots | 0.05 |
| Tomato | 0.5 |
| Turnip, greens | 7.0 |
| Turnip, roots | 0.5 |
| Walnut | 0.2 |
| Watermelon | 0.5 |

(2) A tolerance of 0.05 ppm on raw agricultural food commodities (other than those food commodities already covered by a higher tolerance as a result of use on growing crops) is established for the combined residues of the insecticide esfenvalerate, (*S*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-α-(1-methylethyl)benzeneacetate, its non-racemic isomer, (*R*)-cyano(3-phenoxyphenyl)methyl-(*R*)-4-chloro-α-(1-methylethyl)benzeneacetate and its diastereomers (*S*)-cyano(3-phenoxyphenyl)methyl-(*R*)-4-chloro-α-(1-methylethyl)benzeneacetate and (*R*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-α-(1-methylethyl)benzeneacetate as a result of the use of esfenvalerate in food-handling establishments.

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for the combined residues of the insecticide esfenvalerate, (*S*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-α-(1-methylethyl)benzeneacetate, its non-racemic isomer, (*R*)-cyano(3-phenoxyphenyl)methyl-(*R*)-4-chloro-α-(1-methylethyl)benzeneacetate and its diastereomers (*S*)-cyano(3-phenoxyphenyl)methyl-(*R*)-4-chloro-α-(1-methylethyl)benzeneacetate and (*R*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-α-(1-methylethyl)benzeneacetate, in or on food commodities as follows:

| Commodity | Parts per million |
|---|---|
| Cabbage, chinese, bok choy | 1.0 |
| Kohlrabi | 2.0 |
| Lettuce, head | 5.0 |

* * * * *

**§ 180.626 [Amended]**

■ 14. Section 180.626 is amended by removing the entry for ''peanut, hay'' from the table in paragraph (a)(1).

[FR Doc. E9–21895 Filed 9–10–09; 8:45 am]

BILLING CODE 6560–50–S

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 64

**[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8091]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

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

## PART 64—[AMENDED]

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

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

### § 64.6 [Amended]

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

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region II** | | | | |
| New York: | | | | |
| Atlantic Beach, Village of, Nassau County. | 360458 | NA, Emerg.; March 9, 2004, Reg.; September 11, 2009, Susp. | Sept. 11, 2009 .. | Sept. 11, 2009. |
| Freeport, Village of, Nassau County ..... | 360464 | November 26, 1971, Emerg.; February 14, 1976, Reg.; September 11, 2009, Susp. | .....*do ..... | do. |
| Lawrence, Village of, Nassau County ... | 360476 | June 27, 1975, Emerg.; May 16, 1983, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Massapequa Park, Village of, Nassau County. | 360480 | June 6, 1975, Emerg.; January 19, 1983, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Saddle Rock, Village of, Nassau County. | 360491 | July 17, 1975, Emerg.; October 18, 1983, Reg.; September 11, 2009, Susp. | .....do ..... | do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Sea Cliff, Village of, Nassau County | 360493 | September 17, 1973, Emerg.; February 1, 1978, Reg.; September 11, 2009, Susp. | do | do. |
| Valley Stream, Village of, Nassau County. | 360495 | July 22, 1975, Emerg.; January 5, 1984, Reg.; September 11, 2009, Susp. | do | do. |
| **Region III** | | | | |
| Virginia: | | | | |
| Boydton, Town of, Mecklenburg County | 510269 | October 18, 1978, Emerg.; December 3, 1982, Reg.; September 11, 2009, Susp. | do | do. |
| Chase City, Town of, Mecklenburg County. | 510297 | June 10, 1975, Emerg.; June 18, 1982, Reg.; September 11, 2009, Susp. | do | do. |
| Clarksville, Town of, Mecklenburg County. | 510209 | April 15, 1974, Emerg.; August 6, 1982, Reg.; September 11, 2009, Susp. | do | do. |
| Mecklenburg County, Unincorporated Areas. | 510189 | November 7, 1973, Emerg.; August 15, 1978, Reg.; September 11, 2009, Susp. | do | do. |
| **Region IV** | | | | |
| Alabama: | | | | |
| Anderson, Town of, Lauderdale County | 010407 | NA, Emerg.; September 7, 2000, Reg.; September 11, 2009, Susp. | do | do. |
| Bullock County, Unincorporated Areas | 010231 | February 19, 1976, Emerg.; June 1, 1987, Reg.; September 11, 2009, Susp. | do | do. |
| Butler County, Unincorporated Areas | 010017 | February 27, 2006, Emerg.; NA, Reg.; September 11, 2009, Susp. | do | do. |
| Courtland, Town of, Lawrence County | 010141 | March 11, 1974, Emerg.; April 17, 1978, Reg.; September 11, 2009, Susp. | do | do. |
| Florence, City of, Lauderdale County | 010140 | May 24, 1973, Emerg.; May 2, 1977, Reg.; September 11, 2009, Susp. | do | do. |
| Georgiana, City of, Butler County | 010018 | December 5, 1974, Emerg.; July 15, 1977, Reg.; September 11, 2009, Susp. | do | do. |
| Greenville, City of, Butler County | 010329 | March 13, 1975, Emerg.; May 1, 1980, Reg.; September 11, 2009, Susp. | do | do. |
| Hillsboro, Town of, Lawrence County | 010305 | December 21, 1978, Emerg.; April 2, 1986, Reg.; September 11, 2009, Susp. | do | do. |
| Lauderdale County, Unincorporated Areas. | 010323 | June 14, 1979, Emerg.; February 4, 1981, Reg.; September 11, 2009, Susp. | do | do. |
| Lawrence County, Unincorporated Areas. | 010324 | NA, Emerg.; March 14, 1991, Reg.; September 11, 2009, Susp. | do | do. |
| Moulton, City of, Lawrence County | 010142 | April 1, 1974, Emerg.; October 16, 1979, Reg.; September 11, 2009, Susp. | do | do. |
| North Courtland, Town of, Lawrence County. | 010444 | January 15, 2003, Emerg.; January 28, 2003, Reg.; September 11, 2009, Susp. | do | do. |
| Rogersville, Town of, Lauderdale County. | 010339 | October 30, 2006, Emerg.; NA, Reg.; September 11, 2009, Susp. | do | do. |
| Union Springs, City of, Bullock County | 010016 | November 8, 1974, Emerg.; August 15, 1983, Reg.; September 11, 2009, Susp. | do | do. |
| Florida: | | | | |
| Aventura, City of, Miami-Dade County | 120676 | NA, Emerg.; October 22, 1997, Reg.; September 11, 2009, Susp. | do | do. |
| Bal Harbour, Town of, Miami-Dade County. | 120636 | August 4, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | do | do. |
| Bay Harbor Islands, Town of, Miami-Dade County. | 120637 | August 4, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | do | do. |
| Biscayne Park, Village of, Miami-Dade County. | 120638 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | do | do. |
| Coral Gables, City of, Miami-Dade County. | 120639 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | do | do. |
| Cutler Bay, Town of, Miami-Dade County. | 120218 | NA, Emerg.; August 31, 2006, Reg.; September 11, 2009, Susp. | do | do. |
| do.al, City of, Miami-Dade County | 120041 | NA, Emerg.; May 12, 2004, Reg.; September 11, 2009, Susp. | do | do. |
| El Portal, Village of, Miami-Dade County. | 120640 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | do | do. |
| Florida City, City of, Miami-Dade County. | 120641 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | do | do. |
| Golden Beach, Town of, Miami-Dade County. | 120642 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | do | do. |
| Hialeah, City of, Miami-Dade County | 120643 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | do | do. |
| Hialeah Gardens, City of, Miami-Dade County. | 120644 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | do | do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Homestead, City of, Miami-Dade County. | 120645 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Indian Creek, Village of, Miami-Dade County. | 120646 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Islandia, City of, Miami-Dade County .... | 120647 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Key Biscayne, Village of, Miami-Dade County. | 120648 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Medley, Town of, Miami-Dade County .. | 120649 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Miami, City of, Miami-Dade County ..... | 120650 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Miami Beach, City of, Miami-Dade County. | 120651 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Miami Lakes, Town of, Miami-Dade County. | 120686 | NA, Emerg.; July 17, 2003, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Miami Shores Village, Village of, Miami-Dade County. | 120652 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Miami Springs, City of, Miami-Dade County. | 120653 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Miami-Dade County, Unincorporated Areas. | 120635 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| North Bay Village, City of, Miami-Dade County. | 120654 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| North Miami, City of, Miami-Dade County. | 120655 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| North Miami Beach, City of, Miami-Dade County. | 120656 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Opa-Locka, City of, Miami-Dade County | 120657 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Palmetto Bay, Village of, Miami-Dade County. | 120687 | NA, Emerg.; February 2, 2005, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Pinecrest, Village of, Miami-Dade County. | 120425 | NA, Emerg.; October 13, 1998, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| South Miami, City of, Miami-Dade County. | 120658 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Sunny Isles Beach, City of, Miami-Dade County. | 120688 | NA, Emerg.; September 10, 2003, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Surfside, Town of, Miami-Dade County | 120659 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Sweetwater, City of, Miami-Dade County. | 120660 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Virginia Gardens, Village of, Miami-Dade County. | 120661 | August 14, 1970, Emerg.; September 29, 1972, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Georgia: | | | | |
| Adel, City of, Cook County ..... | 130060 | December 17, 1973, Emerg.; September 1, 1977, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Americus, City of, Sumter County ..... | 130203 | March 28, 1975, Emerg.; December 16, 1988, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Argyle, Town of, Clinch County ..... | 130049 | November 3, 1975, Emerg.; July 3, 1986, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Cecil, City of, Cook County ..... | 130568 | December 5, 2000, Emerg.; December 6, 2001, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Clinch County, Unincorporated Areas ... | 130048 | October 10, 1975, Emerg.; August 1, 1986, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Coffee County, Unincorporated Areas .. | 130465 | August 11, 1987, Emerg.; August 2, 1990, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Cook County, Unincorporated Areas .... | 130501 | November 20, 1991, Emerg.; April 3, 1996, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| do.ly County, Unincorporated Areas ..... | 130532 | September 22, 1995, Emerg.; June 4, 1996, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| do.glas, City of, Coffee County ..... | 130216 | March 5, 1974, Emerg.; July 16, 1979, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Dupont, City of, Clinch County ..... | 130050 | October 1, 1975, Emerg.; June 3, 1986, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Homerville, City of, Clinch County ..... | 130051 | July 24, 1975, Emerg.; July 9, 1982, Reg.; September 11, 2009, Susp. | .....do ..... | do. |
| Lenox, Town of, Cook County ..... | 130569 | January 12, 2001, Emerg.; December 6, 2001, Reg.; September 11, 2009, Susp. | .....do ..... | do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Leslie, City of, Sumter County | 130395 | August 6, 1975, Emerg.; September 29, 1986, Reg.; September 11, 2009, Susp. | .....do | do. |
| Molena, City of, Pike County | 130376 | July 25, 1996, Emerg.; September 1, 2004, Reg.; September 11, 2009, Susp. | .....do | do. |
| Pike County, Unincorporated Areas | 130511 | October 11, 1994, Emerg.; March 18, 1996, Reg.; September 11, 2009, Susp. | .....do | do. |
| Pinehurst, City of, do.ly County | 130071 | July 30, 1975, Emerg.; June 25, 1976, Reg.; September 11, 2009, Susp. | .....do | do. |
| Ringgold, City of, Catoosa County | 130029 | February 5, 1974, Emerg.; June 15, 1978, Reg.; September 11, 2009, Susp. | .....do | do. |
| Sparks, Town of, Cook County | 130061 | December 26, 1973, Emerg.; November 16, 1977, Reg.; September 11, 2009, Susp. | .....do | do. |
| Sumter County, Unincorporated Areas | 130521 | April 26, 1995, Emerg.; May 6, 1996, Reg.; September 11, 2009, Susp. | .....do | do. |
| Unadilla, City of, Dooly County | 130072 | July 16, 1975, Emerg.; July 23, 1982, Reg.; September 11, 2009, Susp. | .....do | do. |
| Zebulon, City of, Pike County | 130529 | August 5, 1998, Emerg.; NA, Reg.; September 11, 2009, Susp. | .....do | do. |
| South Carolina: | | | | |
| Oconee County, Unincorporated Areas | 450157 | May 16, 1975, Emerg.; September 1, 1987, Reg.; September 11, 2009, Susp. | .....do | do. |
| Seneca, City of, Oconee County | 450158 | July 24, 1975, Emerg.; December 16, 1977, Reg.; September 11, 2009, Susp. | .....do | do. |
| Walhalla, Town of, Oconee County | 450159 | May 20, 1975, Emerg.; June 17, 1986, Reg.; September 11, 2009, Susp. | .....do | do. |

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

Dated: September 4, 2009.

**Edward L. Conner,**

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

[FR Doc. E9–21910 Filed 9–10–09; 8:45 am]

BILLING CODE 9110–12–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 79

**[CG Docket No. 05–231 and ET Docket No. 99–254; DA 09–1373]**

## Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers

**AGENCY:** Federal Communications Commission.

**ACTION:** Correcting amendments.

**SUMMARY:** The Federal Communications Commission is correcting a final rule that appeared in the **Federal Register** on January 13, 2009, 74 FR 1594. That document described new procedures for closed captioning complaints and requirements that video programming distributors provide contact information for handling closed captioning immediate concerns and complaints.

**DATES:** This rule contains information collection requirements subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a separate document in the **Federal Register** announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** Amelia Brown, Disability Rights Office, Consumer and Governmental Affairs Bureau at (202) 418–2799 (voice), (202) 418–7804 (TTY), or e-mail at *Amelia.Brown@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

In *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers*, CG Docket No. 05–231, ET Docket No. 99–254, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, FCC 08–255, published at 74 FR 1594, January 13, 2009, the Commission amended various of its, and adopted new, closed captioning rules.

### Need for Correction

This correction is necessary to clarify new 47 CFR 79.1(i)(1).

### List of Subjects in 47 CFR Part 79

Cable television operators, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

■ Accordingly, 47 CFR Part 79 is corrected by making the following correcting amendment:

## PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

■ 1. The authority citation for Part 79 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613.

■ 2. Section 79.1 is amended by revising paragraph (i)(1) to read as follows:

**§ 79.1 Closed captioning of video programming.**

* * * * *

(i) * * *

(1) Video programming distributors shall make available contact information for the receipt and handling of immediate closed captioning concerns raised by consumers while they are watching a program. Programming distributors must designate a telephone number, fax number, and e-mail address for purposes of receiving and responding immediately to any closed captioning concerns. Distributors shall

include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements). Distributors shall keep this information current and update it to reflect any changes within 10 business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories. Video programming distributors should ensure that any staff reachable through this contact information has the capability to immediately respond to and address consumers' concerns. To the extent that a distributor has personnel available, either on site or remotely, to address any technical problems that may arise, consumers using this dedicated contact information must be able to reach someone, either directly or indirectly, who can address the consumer's captioning concerns. This provision does not require that distributors alter their hours of operation or the hours during which they have staffing available; at the same time, however, where staff is available to address technical issues that may arise during the course of transmitting programming, they also must be knowledgeable about and be able to address closed captioning concerns. In situations where a distributor is not immediately available, any calls or inquiries received, using this dedicated contact information, should be returned or otherwise addressed within 24 hours. In those situations where the captioning problem does not reside with the distributor, the staff person receiving the inquiry should refer the matter appropriately for resolution.''

* * * * *

**Mark Stone,**

*Deputy Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission.*

[FR Doc. E9–21796 Filed 9–10–09; 8:45 am]

**BILLING CODE 6712–01–P**

# Proposed Rules

Federal Register
Vol. 74, No. 175
Friday, September 11, 2009

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

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 26 and 301

**[REG–136563–07]**

**RIN 1545–BG89**

## Generation-Skipping Transfers (GST) Section 6011 Regulations and Amendments to the Section 6112 Regulations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that provide rules relating to the disclosure of listed transactions and transactions of interest with respect to the generation-skipping transfer tax under section 6011 of the Internal Revenue Code (Code), conforming amendments under sections 6111 and 6112, and rules relating to the preparation and maintenance of lists with respect to reportable transactions under section 6112. The regulations affect taxpayers participating in listed transactions and transactions of interest and material advisors to such transactions. The proposed regulations also contain rules under section 6112 that affect material advisors to reportable transactions. These regulations provide guidance regarding the length of time a material advisor has to prepare the list that must be maintained after the list maintenance requirement first arises with respect to a reportable transaction. These regulations also clarify guidance regarding designation agreements.

**DATES:** Written or electronic comments and requests for a public hearing must be received by December 10, 2009.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–136563–07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–136563–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–136563–07).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Charles D. Wien, (202) 622–3070; concerning the submissions of comments and requests for hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1686. Responses to these collections of information are mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number assigned by the Office of Management and Budget.

On August 3, 2007, the IRS published final regulations under § 301.6112–1 (TD 9352; 72 FR 43154). These regulations propose to modify those regulations.

The estimated annual burden per recordkeeper for the collection of information in § 301.6112–1T is 100 hours and the estimated number of recordkeepers is 500.

Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be sent to Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books and records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document proposes to amend 26 CFR part 26 to provide rules for purposes of the generation-skipping transfer tax that require the disclosure of listed transactions and transactions of interest by certain taxpayers on their Federal tax returns under section 6011. This document also proposes to modify and clarify some of the rules under 26 CFR part 301 relating to the disclosure obligations of material advisors under section 6111 and the list maintenance requirements of material advisors with respect to reportable transactions under section 6112.

On July 31, 2007, the IRS and Treasury Department issued final regulations under section 6011 (TD 9350; 72 FR 43146), 6111 (TD 9351; 72 FR 43157) and 6112 (TD 9352; 72 FR 43154) (the July 2007 regulations) that were published in the **Federal Register** on August 3, 2007. In the July 2007 regulations, the IRS and Treasury Department amended 26 CFR parts 20, 25, 31, 53, 54, and 56 to provide that certain taxpayers would be required to disclose transactions of interest, in addition to listed transactions, on their Federal tax returns under section 6011. These regulations propose to amend 26 CFR part 26 to add similar rules under section 6011 for the tax on generation-skipping transfers. The July 2007 regulations also amended 26 CFR part 301 to provide rules relating to the obligation of material advisors to prepare and maintain lists with respect to reportable transactions under section 6112. These proposed regulations make minor clarifications and modifications to the rules under section 6112.

### Explanation of Provisions

The regulations should encompass transactions that purport to reduce or eliminate the generation-skipping transfer tax as listed transactions or transactions of interest and require the disclosure of these transactions under section 6011. Although these regulations are being proposed, the IRS and Treasury Department do not have plans to identify any such transaction at this time. Clarifying amendments are being made to the regulations under sections 6111 and 6112 as a result of the generation-skipping transfer tax rules proposed under section 6011.

The IRS and Treasury Department are proposing to amend the regulations

under section 6112 to provide that, before a material advisor must make available to the IRS the list as described in § 301.6112–1(b), the material advisor will have a specified period of time to prepare the list after the list maintenance requirement first arises with respect to a reportable transaction. The specified period of time for a material advisor to prepare a list will be 30 calendar days or a period greater than 30 calendar days as may be specifically described in the published guidance designating a transaction as a reportable transaction. A request for a list under section 6112 made during the list preparation time period will be treated as having been made on the day after the list preparation time period ends.

In addition, the regulations make clarifications to the rules regarding designation agreements. A group of material advisors to a reportable transaction may designate by written agreement one material advisor from the group to maintain the list required under section 6112. The existence of a designation agreement, however, does not affect the ability of the IRS to request the list from any party to the designation agreement, or the obligation of any party receiving a request from the IRS to furnish the list as required under section 6112 and the related regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most of the material advisors affected by these regulations are not small entities and for those material advisors that are small entities most of the information is already required under the current regulations. Also, the collection of information referenced in these regulations has been approved under OMB control number 1545–1686. The clarification and new information required by these proposed regulations add little or no new burden to those existing requirements. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules, how they can be made easier to understand, and the administrability of the rules in the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that submits timely written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is Charles D. Wien, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 26*

Estate taxes, Reporting and recordkeeping requirements.

*26 CFR Part 301*

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

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 26 and 301 are proposed to be amended as follows:

## PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

**Paragraph 1.** The authority citation for part 26 is amended to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *.
Section 26.6011–4 also issued under 26 U.S.C. 6011 * * *.

**Par. 2.** Section 26.6011–4 is added to read as follows:

**§ 26.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.**

(a) *In general*. If a transaction is identified as a *listed transaction* or a *transaction of interest* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance, and the listed transaction or transaction of interest involves a tax on generation-skipping transfers under chapter 13 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective/applicability date*. This section applies to listed transactions and transactions of interest entered into on or after the date these regulations are published as final regulations in the **Federal Register**.

## PART 301—PROCEDURE AND ADMINISTRATION

**Par. 3.** The authority citation for part 301 continues to read in part as follows:

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

**Par. 4.** Section 301.6111–3 is amended as follows:

1. Paragraphs (b)(2)(i)(A) and (b)(3)(i)(B) are amended by adding the language ''26.6011–4,'' after each occurrence of ''25.6011–4,''.
2. Paragraphs (c)(2) and (c)(13) are amended by adding the language ''26.6011–4,'' after ''25.6011–4,''.
3. Paragraph (i)(1) is revised.

The revision reads as follows:

**§ 301.6111–3 Disclosure of reportable transactions.**

* * * * *

(i) *Effective/applicability date*—(1) *In general*. This section applies to transactions with respect to which a material advisor makes a tax statement on or after August 3, 2007. However, this section applies to transactions of interest entered into on or after November 2, 2006, with respect to which a material advisor makes a tax statement under this section on or after November 2, 2006. Paragraphs (b)(2)(i)(A), (b)(3)(i)(B), (c)(2), and (c)(13) of this section apply to transactions with respect to which a material advisor makes a tax statement under this section after the date these regulations are published as final regulations in the **Federal Register**. Paragraph (h) of this section applies to ruling requests received on or after November 2, 2006. Otherwise, the rules that apply on or before the date these regulations are published as final regulations in the **Federal Register** are contained in this section in effect prior to the date these regulations are published as final

regulations in the **Federal Register** (*see* 26 CFR part 301 revised as of April 1, 2009).

* * * * *

**Par. 5.** Section 301.6112–1 is amended as follows:

1. Paragraph (b)(1) is revised.
2. Paragraphs (c)(3) and (c)(12) are amended by adding the language ''26.6011–4,'' after ''25.6011–4,''.
3. Paragraphs (f) and (g) are revised.

The revisions read as follows:

**§ 301.6112–1 Material advisors of reportable transactions must keep lists of advisees, etc.**

* * * * *

(b) * * * (1) *In general.* A separate list must be prepared and maintained for each reportable transaction. However, one list must be maintained for substantially similar transactions. A material advisor will have 30 calendar days from the date the list maintenance requirement first arises (*see* § 301.6111–3(b)(4) and paragraph (a) of this section) with respect to a reportable transaction to prepare the list that must be maintained under this section with respect to that transaction. The Commissioner in his discretion also may provide in published guidance designating a transaction as a reportable transaction a list preparation time period greater than 30 calendar days. If a list is requested under this section during the list preparation time period, the request for the list will be treated as having been made on the day after the list preparation time period ends. A list must be maintained in a form that enables the IRS to determine without undue delay or difficulty the information required in paragraph (b)(3) of this section. The Commissioner in his discretion may provide in published guidance a form or method for maintaining or furnishing the list.

* * * * *

(f) *Designation agreements.* If more than one material advisor is required to maintain a list of persons for a reportable transaction, in accordance with paragraph (b) of this section, the material advisors may designate by written agreement a single material advisor (the designated material advisor) to maintain the list or a portion of the list. A designation agreement does not relieve material advisors from their obligation to maintain the list in accordance with paragraph (b) of this section or to furnish the list to the IRS in accordance with paragraph (e)(1) of this section, but a designation agreement may allow one material advisor to maintain the list on behalf of the other material advisors who are a party to the designation agreement. A material advisor is not relieved from the requirement of this section because a material advisor is unable to obtain the list from any designated material advisor, any designated material advisor did not maintain a list, or the list maintained by any designated material advisor is not complete. The existence of a designation agreement does not affect the ability of the IRS to request the list from any party to the designation agreement. The IRS may request the list from any party to the designation agreement, and the party receiving the request must furnish the list to the IRS in accordance with paragraph (e)(1) of this section, regardless of whether the list was maintained by another party pursuant to the terms of a designation agreement.

(g) *Effective/applicability date.* In general, this section applies to transactions with respect to which a material advisor makes a tax statement under § 301.6111–3 on or after August 3, 2007. However, this section applies to transactions of interest entered into on or after November 2, 2006, with respect to which a material advisor makes a tax statement under § 301.6111–3 on or after November 2, 2006. Paragraphs (b)(1), (c)(3), (c)(12), and (f) of this section apply to transactions with respect to which a material advisor makes a tax statement under § 301.6111–3 after the date these regulations are published as final regulations in the **Federal Register**. Otherwise, the rules that apply on or before the date these regulations are published as final regulations in the **Federal Register** are contained in this section in effect prior to the date these regulations are published as final regulations in the **Federal Register** (*see* 26 CFR part 301 revised as of April 1, 2009).

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E9–21665 Filed 9–10–09; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 721

**[EPA–HQ–OPPT–2008–0483; FRL–8432–3]**

**RIN 2070–AJ36**

## Elemental Mercury Used in Flow Meters, Natural Gas Manometers, and Pyrometers; Proposed Significant New Use Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for elemental mercury (CAS No. 7439–97–6) for use in flow meters, natural gas manometers, and pyrometers, except for use in these articles when they are in service as of the effective date of the final rule. This action would require persons who intend to manufacture (including import) or process elemental mercury for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. Persons subject to the provisions of this proposed rule would not be exempt from significant new use reporting if they import into the United States or process elemental mercury as part of an article. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

**DATES:** Comments must be received on or before November 10, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0483, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on–line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0483. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0483. EPA's policy is that all comments received will be included in the docket without change and may be made available on–line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

*For technical information contact*: Peter Gimlin, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0515; e-mail address: *gimlin.peter@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you manufacture (defined by statute to include import) or process elemental mercury used in flow meters, natural gas manometers, or pyrometers. Potentially affected entities may include, but are not limited to, manufacturers of instruments and related products for measuring, displaying, and controlling industrial process variables (North American Industrial Classification System (NAICS) code 334513). This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The NAICS codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5 for SNUR-related obligations. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after October 13, 2009 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

### *A. What Action is the Agency Taking?*

This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of elemental

mercury for any of the following significant new uses: Flow meters, natural gas manometers, or pyrometers. This proposed rule does not affect the manufacturing and processing of elemental mercury for use in these articles when they are in service as of the effective date of the final rule. EPA believes this proposed SNUR is necessary because manufacturing, processing, use, or disposal of mercury associated with these uses may produce significant changes in human and environmental exposures. The rationale and objectives for this proposed SNUR are explained in Unit IV.

*B. What is the Agency's Authority for Taking this Action?*

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). As described in Unit II.C., the general SNUR provisions are found at 40 CFR part 721, subpart A.

*C. Applicability of General Provisions*

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. However, 40 CFR 721.45(f) does not apply to this SNUR. As a result, persons subject to the provisions of this proposed rule would not be exempt from significant new use reporting if they import or process elemental mercury as part of an article (see 40 CFR 721.5). Conversely, the exemption from notification requirements for exported articles (see 40 CFR 707.60(b)) remains in force. Thus, persons who export elemental mercury as part of an article are not required to provide export notification.

Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Such persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

## III. Summary of the Proposed Rule

*A. Overview of Mercury and Mercury Uses*

1. *Mercury*. This proposed rule applies to elemental mercury (CAS No. 7439–97–6), which is a naturally occurring element. Because of its unique properties (e.g., exists as a liquid at room temperature and forms amalgams with many metals), elemental mercury has been used in many industrial processes and consumer products. In addition to its useful characteristics, mercury also is known to cause adverse health effects in humans and wildlife. These effects can vary depending on the form of mercury to which a person or animal is exposed, as well as the magnitude, length, and frequency of exposure.

The most prevalent human and wildlife exposure to mercury results from ingesting fish contaminated with methylmercury. Methylmercury is an organo-metallic compound that is formed via the conversion of elemental or inorganic mercury compounds by certain microorganisms and other natural processes. For example, elemental mercury may evaporate and be emitted into the atmosphere. Atmospheric mercury can be deposited directly into water bodies or watersheds, where it can be washed into surface waters via overland run-off. Once deposited in sediments, certain microorganisms and other natural processes can convert elemental mercury into methylmercury. Methylmercury bioaccumulates, which means that it is taken up and concentrated in the tissues of aquatic, mammalian, avian, and other wildlife. Methylmercury is a highly toxic substance; a number of adverse health effects associated with exposure to it have been identified in humans and in animal studies. Most extensive are the data on neurotoxicity, particularly in developing organisms. Fetuses, infants, and young children generally are more sensitive to methylmercury's neurological effects than adults.

In 2004, EPA and the Food and Drug Administration (FDA) issued a national consumption advisory concerning mercury in fish. The advisory contains recommended limits on the amount of certain types of fish and shellfish that pregnant women and young children can safely consume. By 2005, all 50 states had issued fish consumption advisories for fish from certain water bodies known to be contaminated by methylmercury, see *http://www.epa.gov/mercury/advisories.htm.*

In addition to methylmercury, exposure to elemental mercury can also pose health risks. Elemental mercury primarily causes health effects when it is breathed as a vapor that can be absorbed through the lungs. These exposures can occur when elemental mercury is spilled or products that contain elemental mercury break, resulting in release of mercury to the air, particularly in warm or poorly-ventilated indoor spaces.

For a more detailed summary of background information (e.g., chemistry, environmental fate, exposure pathways, and health and environmental effects), as well as references pertaining to elemental mercury that EPA considered before proposing this rule, please refer to EPA's proposed SNUR for mercury switches in motor vehicles, issued in the **Federal Register** of July 11, 2006 (71 FR 39035)(FRL–7733–9), or in the docket for the 2006 proposal under docket ID number EPA–HQ–OPPT–2005–0036. All documents in the docket are listed in the docket's index which is available at *http://www.regulations.gov*.

2. *Mercury uses*. Elemental mercury has been used in thousands of products and applications. Over the past two decades, there has been a dramatic drop in elemental mercury use by industries in the United States. In response to increased concerns about exposure to anthropogenic sources of mercury in the environment and also because of the availability of suitable mercury-free

products, Federal and State governments have made efforts to limit the use of elemental mercury in certain products. Various states have banned or restricted the manufacture or sale of products containing mercury, see *http://www.epa.gov/epawaste/hazard/tsd/mercury/laws.htm*. On October 7, 2007, EPA issued a final SNUR for elemental mercury used in convenience light switches, anti-lock braking system switches, and active ride control system switches in certain motor vehicles (72 FR 56903).

In the past, elemental mercury was used in the manufacture of flow meters, natural gas manometers, and pyrometers. The latest information available to EPA indicates that the manufacture of these mercury-containing articles has ceased (Ref. 1). EPA requests comments on whether elemental mercury continues to be used in manufacturing (including importing into the United States) flow meters, natural gas manometers, or pyrometers. EPA also requests comment on whether elementary mercury is being used in the remanufacturing of any of these articles that remain in use.

3. *Flow meters containing elemental mercury*. Flow meters are instruments which measure the flow rate of liquids or gases. Historically, they have been used in civil service applications, e.g., water treatment plants, sewage plants, and power stations. Flow meters contained up to 5 kilograms (kg) of elemental mercury. At present, the sale of mercury-containing flow meters is banned in six states: California, Maine, Massachusetts, New Hampshire, New York, and Vermont (Ref. 4). Many mercury-free alternatives exist, including differential pressure meters, positive displacement meters, velocity meters, and mass meters. EPA found sufficient information to conclude that mercury-containing flow meters are no longer manufactured in or imported into the United States (Ref. 1).

4. *Natural gas manometers containing elemental mercury*. A manometer is an instrument used to measure the pressure of gases or liquids. For purposes of this proposed rule, a natural gas manometer means a mercury-containing instrument used in the natural gas industry to measure the pressure differential of natural gas in a pipeline. Mercury manometers have been used in the natural gas industry on individual wells, pipeline junctions, pipeline manifolds, compressor stations, and distribution points. The manometers contain between 3.2 and 54.5 kg of mercury. A common design for manometers is a U-shaped tube with one end opened to the atmosphere and the other connected to a process. Contained in the tube is a liquid (mercury, in the past). Pressure differential is measured by comparing the liquid levels in each of the two vertical sections of the tube. Seven states have enacted broad bans on the sale of mercury manometers (Ref. 4), and Louisiana prohibits the sale of mercury-containing natural gas manometers (Ref. 2). Available information indicates that bellows orifice meters have replaced mercury meters in the natural gas industry. EPA found sufficient information to conclude that mercury-containing manometers are no longer manufactured in or imported into the United States (Ref. 1).

5. *Pyrometers containing elemental mercury*. A pyrometer is an instrument that is similar to a thermometer but is typically used to measure extremely high temperatures in industrial processes such as in foundries, for pottery and ceramic kiln work, and in automotive applications. Historically, pyrometers contained mercury in sensing units in amounts ranging between 5 and 10 grams of mercury. In recent years, California, Maine, Massachusetts, New Hampshire, New York, and Vermont have banned the sale of mercury-containing pyrometers (Ref. 4). EPA found sufficient information to conclude that mercury-containing pyrometers are no longer manufactured, or imported into the U.S. (Ref. 1).

6. *Potential exposure and release*. The typical lifecycle of flow meters, natural gas manometers, and pyrometers includes several stages: Manufacture, distribution in commerce, use, and waste management (landfilling or recycling). At any point in the lifecycle, there is potential for mercury to be released as liquid or vapor. Workers and others can be exposed to the mercury and it can be released into water, air, or onto land as the mercury is transported, stored, and handled during manufacturing. While the flow meters, manometers, and pyrometers are in use, the mercury can vaporize or spill due to breakage during transport, installation, maintenance, refilling, or repair. Beginning in the 1920s, mercury-containing manometers were used in the Louisiana natural gas industry. Mercury from these manometers has been identified as a source of soil contamination. (Ref. 3). Other opportunities for release can occur at the end of the lifecycle of flow meters, manometers, and pyrometers, as the devices are removed from equipment and facilities, and handled during waste management.

*B. Proposed Action*

EPA is proposing to designate as significant new uses use of elemental mercury in flow meters, natural gas manometers, or pyrometers. However, use of elemental mercury in these articles when they are in service as of the effective date of the final rule would not be covered as a significant new use under this proposed SNUR. Proposed definitions of ''flow meter,'' ''natural gas manometer,'' and ''pyrometer'' can be found at 40 CFR 721.10068 of the regulatory text for this proposal.

This action would amend 40 CFR 721.10068 and require persons who intend to manufacture or process elemental mercury for a use designated by this proposed rule as a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of elemental mercury for such significant new use. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

For this SNUR, EPA is proposing not to include the general ''article'' exemption at 40 CFR 721.45(f). Thus, persons importing or processing elemental mercury (including when part of an article) for a significant new use would be subject to the notification requirements of 40 CFR 721.25. EPA proposes not to include this exemption because flow meters, natural gas manometers, and pyrometers are articles, and a primary concern associated with this SNUR is potential exposures associated with the lifecycle of these uses. Further, it is possible to reclaim elemental mercury from certain articles, which could be used to produce flow meters, natural gas manometers, and pyrometers. EPA notes that, in accordance with TSCA section 12(a) and 40 CFR 721.45(g), persons who manufacture or process elemental mercury solely for export would be exempt from the notification requirements of 40 CFR 721.25, if when distributing the substance in commerce, it is labeled in accordance with TSCA section 12(a)(1)(B). Further, EPA notes that the exemption from the TSCA section 12(b) notification requirements for exported articles (see 40 CFR 707.60(b)) would remain in force. Thus, persons who export elemental mercury as part of an article would not be required to provide export notification.

EPA believes elemental mercury is no longer used to manufacture flow meters, natural gas manometers, or pyrometers, but some of these articles may remain in service in the United States. EPA believes the ongoing use of such

articles, including some maintenance and servicing activities, falls outside the regulation of significant new uses, and EPA has clarified this in the proposed rule text. Thus, the manufacturing and processing of elemental mercury for use in these articles, provided they are in service as of the effective date of the final rule, would not be covered by the rule. For example, if an article that is in service as of the effective date of the final rule is removed from service for maintenance or servicing, including the addition of new mercury, and then placed back into service, any manufacturing or processing of mercury associated with that maintenance or servicing would not be covered by the rule. Otherwise, the addition of new mercury to these existing articles after the effective date of the final rule could potentially trigger a significant new use notice under this proposed rule (e.g., if it involved processing of the mercury), which is not EPA's intent.

## IV. Rationale and Objectives

### *A. Rationale*

As summarized in Unit III.A., EPA has concerns regarding the environmental fate and the exposure pathways that lead to the presence of methylmercury in fish and the consumption of mercury-contaminated fish by humans and wildlife. EPA is encouraged by the discontinuation of the use of elemental mercury in the manufacturing of flow meters, natural gas manometers, and pyrometers. However, EPA is concerned that the manufacturing or processing of elemental mercury for use in flow meters, natural gas manometers, or pyrometers could be reinitiated in the future. Accordingly, EPA wants the opportunity to evaluate and control, where appropriate, activities associated with those uses, if such manufacturing or remanufacturing were to occur again. The required notification provided by a SNUN would provide EPA with the opportunity to evaluate activities associated with a significant new use and an opportunity to protect against unreasonable risks, if any, from exposure to mercury.

### *B. Objectives*

Based on the considerations in Unit IV.A., EPA has the following objectives with regard to the significant new uses that are designated in this proposed rule:

1. EPA would receive notice of any person's intent to manufacture or process elemental mercury for any of the described significant new uses before that activity begins.

2. EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing of elemental mercury for any of the described significant new uses.

3. EPA would be able to regulate prospective manufacturers or processors of elemental mercury before the described significant new uses of the chemical substance occur, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7.

## V. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what would constitute a significant new use of elemental mercury, EPA considered the four factors listed in section 5(a)(2) of TSCA. The latest information available to EPA indicates that there is no ongoing use of elemental mercury in the manufacture or remanufacture of flow meters, natural gas manometers, or pyrometers. Resumption of these uses of elemental mercury could result in a significant increase in the magnitude and duration of exposure to workers and the surrounding environment at facilities of all types in the lifecycle, as well as an increase in releases which could contribute additional mercury to the atmosphere for long-range transport. Resumption of these uses could also result in exposures to workers who had not previously worked in these facilities when elemental mercury was commonly used, as well as exposures to workers who are not currently being exposed to mercury in the manufacture of flow meters, natural gas manometers, or pyrometers. Increases in mercury releases could lead to increases in mercury concentrations in the environment and reduction in overall ecosystem and human health from consumption of mercury-contaminated fish.

EPA believes that any of these renewed uses of elemental mercury would increase the magnitude and duration of exposure to humans and the environment over that which would otherwise exist. Based upon the relevant factors as discussed in this Unit, EPA has determined that any manufacturing or processing of elemental mercury for use in flow meters, natural gas manometers, or pyrometers is a significant new use.

## VI. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory actions:

### *A. Promulgate a TSCA Section 8(a) Reporting Rule*

Under a TSCA section 8(a) rule, EPA could, among other things, generally require persons to report information to the Agency when they intend to manufacture or process a listed chemical for a specific use or any use. However, for elemental mercury used in flow meters, natural gas manometers, and pyrometers, the use of TSCA section 8(a) rather than SNUR authority would have several limitations. First, if EPA were to require reporting under TSCA section 8(a) instead of TSCA section 5(a), EPA would not have the opportunity to review human and environmental hazards and exposures associated with the proposed significant new use and, if necessary, take immediate follow-up regulatory action under TSCA sections 5(e) or 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because such firms generally are exempt from TSCA section 8(a) reporting requirements. In view of the level of health and environmental concerns about elemental mercury, if used for the proposed significant new use, EPA believes that a TSCA section 8(a) rule for this substance would not meet EPA's regulatory objectives.

### *B. Regulate Elemental Mercury for Use in Flow Meters, Natural Gas Manometers, and Pyrometers Under TSCA Section 6*

EPA may regulate under TSCA section 6 if ''the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture . . . presents or will present an unreasonable risk of injury to health or the environment.'' (TSCA section

6(a)) Given that elemental mercury is no longer being used in the manufacture of flow meters, natural gas manometers, or pyrometers, EPA concluded that risk management action under TSCA section 6 is not necessary at this time. This proposed SNUR would allow the Agency to address the potential risks associated with the proposed significant new use.

*C. Allow the Exemption for Persons Who Import or Process Elemental Mercury as Part of Articles That Could be Subject to the SNUR*

Under the SNUR exemption provision at 40 CFR 721.45(f), a person who imports or processes a substance covered by a SNUR identified in subpart E of part 721 as part of an article is not generally subject to the notification requirements of §721.25 for that substance. However, EPA is concerned that exempting articles would render the SNUR less effective because of the possibility that flow meters, natural gas manometers, or pyrometers containing elemental mercury could be imported or processed for uses subject to this proposed SNUR without the submission of a SNUN. Because mercury-containing flow meters, natural gas manometers and pyrometers are the primary concerns in this SNUR, EPA wishes to include not only bulk elemental mercury but also these and other articles when they contain elemental mercury imported or processed for a significant new use. Thus, EPA is proposing to promulgate this rule without the exemption generally provided for in §721.45(f).

## VII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who begin commercial manufacture or processing of the chemical substance that would be regulated through this proposed rule, if finalized, would have to cease any such activity before the effective date of the rule if and when finalized. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), that person would be considered to have met the requirements of the final SNUR for those activities.

## VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25). However, as a general matter, EPA recommends that SNUN submitters include data that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture, processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a SNUN. As part of this optional pre-notice consultation, EPA would discuss specific data it believes may be useful in evaluating a significant new use. SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) to prohibit or limit activities associated with this chemical.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on:

1. Human exposure and environmental releases that may result from the significant new uses of the chemical substance.
2. Potential benefits of the chemical substance.
3. Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

## IX. SNUN Submissions

SNUNs must be mailed to the Environmental Protection Agency, OPPT Document Control Office (7407M), 1200 Pennsylvania Avenue, NW., Washington, D.C. 20460–0001. Information must be submitted in the form and manner set forth in EPA Form No. 7710-25. This form is available from the Environmental Assistance Division (7408M), 1200 Pennsylvania Avenue, NW., Washington, D.C. 20460–0001 (see 40 CFR 721.25 and 720.40). Forms and information are also available electronically at *http://www.epa.gov/opptintr/newchems/pubs/pmnforms.htm*.

## X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of the chemical substance included in this proposed rule (Ref. 1). EPA's economic analysis (Ref. 1), which is briefly summarized here, is available in the docket for this proposed rule.

The costs of submission of a SNUN will not be incurred by any company until a company decides to pursue a significant new use as defined in this proposed SNUR. In the event that a SNUN is submitted, costs are estimated at approximately $8,000 per SNUN submission, and includes the cost for preparing and submitting the SNUN, and the payment of a user fee. Businesses that submit a SNUN are either subject to a $2,500 user fee required by 40 CFR 700.45(b)(2)(iii), or, if they are a small business with annual sales of less than $40 million when combined with those of the parent company (if any), a reduced user fee of $100 (40 CFR 700.45(b)(1)). In its evaluation of this rule, EPA also considered the potential costs a company might incur by avoiding or delaying the significant new use in the future, but these costs have not been quantified.

In addition to comments on all aspects of this proposal, the Agency is specifically interested in comments and supporting information on the following questions related to assumptions used in the Agency's analysis:

Do you know of any current domestic production of mercury flow meters for the uses defined as significant in this rule that EPA missed? If yes, please provide detailed information.

Are mercury flow meters currently available in the market place for the uses defined as significant in this rule? If yes, please provide detailed information.

Does the analysis capture the lost option value of mercury flow meters? If no, please provide specific information that you believe should be included.

Are the costs for preparing and submitting a SNUN comparable to the costs for preparing and submitting a PMN? If not, in what ways is it different?

Providing supporting and detailed information for comments on these points will be used by EPA to review

related assumptions in the economic analysis as it prepares the final rule.

## XI. References

The following documents are specifically referenced in the preamble for this rulemaking. In addition to these documents, other materials may be available in the docket established for this rulemaking under Docket ID No. EPA–HQ–OPPT–2008–0483, which you can access through *www.regulations.gov*. Those interested in the information considered by EPA in developing this proposed rule, should also consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether the other documents are physically located in the docket.

1. EPA, 2008b. Economic Analysis for the Proposed Significant New Use Rule for Mercury-Containing Flow Meters, Nanometers, and Pyrometers. Washington, D.C. OPPT/EETD/EPAB, July 21, 2009.

2. La. Sess. Law Serv. Act 126 (S.B. 615)

3. State of Louisiana Mercury Risk Reduction Plan, prepared by the Louisiana Department of Environmental Quality, 2007. Available as of September 1, 2008 at *http://www.ldeq.org/portal/Portals/0/organization/MercuryReportforweb.pdf*

4. Mercury Reduction & Education Legislation in the IMERC-Member States, prepared by Terri Goldberg and Adam Wienert, NEWMOA, June 2008. Available as of January 8, 2009 at *http://www.newmoa.org/prevention/mercury/imerc/legislation-2008.htm*

## XII. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this proposed SNUR is a ''significant regulatory action,'' because it meets the criteria in section 3(f) of the Executive Order. Accordingly, this action was submitted to the OMB for review under Executive Order 12866 and any changes made based on OMB recommendations have been documented in the public docket for this rulemaking as required by section 6(a)(3)(E) of the Executive Order.

### *B. Paperwork Reduction Act*

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR, part 9, and included on the related collection instrument, or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070-0038 (EPA ICR No. 1188). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average 110 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, D.C. 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

### *C. Regulatory Flexibility Act*

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since this proposed SNUR would require a person who intends to engage in such activity in the future to first notify EPA by submitting a SNUN, no economic impact will occur unless someone files a SNUN to pursue a significant new use in the future or forgoes profits by avoiding or delaying the significant new use. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted, only one appears to be from a small entity in response to any SNUR. Therefore, EPA believes that the potential economic impact of complying with this SNUR is not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published as a final rule on August 8, 1997 (62 FR 42690)(FRL–5735–4), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

### *D. Unfunded Mandates Reform Act*

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or Tribal government would be impacted by this rulemaking. As such, EPA has determined that this regulatory action would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

### *E. Executive Order 13132: Federalism*

This action would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

### *F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly or uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the

requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply to this proposed rule.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

*I. National Technology Transfer Advancement Act*

Since this action does not involve any technical standards; section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

**List of Subjects in 40 CFR Part 721**

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements

Dated: August 25, 2009.

**Wendy C. Hamnett,**

*Acting Director, Office of Pollution Prevention and Toxics.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

## PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, 2625(c).

■ 2. Section 721.10068 is amended by revising paragraph (a) and adding a new paragraph (b)(2)(vii) to read as follows:

**§ 721.10068 Elemental mercury.**

(a) *Definitions*. The definitions in §721.3 apply to this section. In addition, the following definition applies:

(1) *Motor vehicle* has the meaning found at 40 CFR 85.1703.

(2) *Flow meter* means an instrument used in various applications to measure the flow rate of liquids or gases.

(3) *Natural gas manometer* means an instrument used in the natural gas industry to measure gas pressure.

(4) *Pyrometer* means an instrument used in various applications to measure extremely high temperatures.

(b)* * *

(2)* * *

(vii) Manufacturing or processing of elemental mercury for use in flow meters, natural gas manometers, and pyrometers except for use in these articles when they are in service as of September 11, 2009.

* * * * *

[FR Doc. E9–21894 Filed 9–10–09; 8:45 am]

BILLING CODE 6560–50–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 0907301200–91202–01]**

**RIN 0648–AY07**

## Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; 2009–2010 Biennial Specifications and Management Measures for Canary Rockfish and Petrale Sole

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes a rule to revise the 2009 management measures for petrale sole and to revise the 2010 harvest specifications and management measures for petrale sole and canary rockfish taken in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California.

**DATES:** Comments on this proposed rule must be received no later than 5 p.m., local time on October 13, 2009.

**ADDRESSES:** You may submit comments, identified by RIN 0648–AY07 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Fax: 206–526–6736, Attn: Gretchen Arentzen
- Mail: Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Gretchen Arentzen.

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

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

Copies of the Draft Environmental Assessment (DEA) prepared for this action is available from the NMFS Northwest Region website at *http://www.nwr.noaa.gov* or from the mailing and street addresses listed above.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail *gretchen.arentzen@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register's Website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/*.

### Background

The 2009 and 2010 ABCs, OYs and HGs for Pacific coast groundfish species were established in the final rule for the 2009–2010 groundfish harvest specifications and management measures (74 FR 9874, March 6, 2009). This rule proposes interim measures for two species. For petrale sole this action would reduce catches in 2009 by

implementing more restrictive management measures, lower the 2010 OY for petrale sole, and implement more restrictive management measures in 2010 to keep projected impacts below the new 2010 OY. For canary rockfish this action would lower the 2010 OY and implement more restrictive 2010 management measures to keep projected impacts below the new 2010 OY. These changes are being proposed because the PFMC received new stock assessments that indicate the stocks are in worse shape than we had thought at the beginning of 2009.

The Council reviewed a new stock assessment for petrale sole in June, considered questions raised by the Stock Assessment and Review Panel (STAR Panel) and the Scientific and Statistical Committee (SSC), and asked the SSC to review the open issues and report back to the Council in September. While there is uncertainty regarding the results of the final stock assessment, it is likely that, under any outcome, the stock will be overfished at the beginning of 2011 if the entire current petrale OYs are taken in 2009 and 2010. In September the Council will consider the updated information and make a final recommendation for the petrale changes in 2009 and 2010, and make its initial recommendations for management for 2011 and beyond. NMFS anticipates implementing a final rule for 2009 and 2010 in October. The canary rockfish assessment was an update of the prior assessment, incorporating revised historic catch data. This assessment concluded that the stock is more depleted than the previous assessment had indicated. The Council approved the new stock assessment, and the assessment authors will develop a rebuilding analysis. The Council will use the results of the rebuilding analysis in November to consider likely revisions to the rebuilding plan for 2011 and beyond and to recommend OY and harvest revisions in 2010. NMFS anticipates implementing the final rule for 2010 in December 2009.

This action is needed to respond to the most recently available stock status information during the remainder of 2009 and in 2010, while NMFS and the Council complete the stock assessments, revised rebuilding plans, EIS, and full rulemaking for the 2011 and 2012 specifications and management measures for the entire groundfish fishery.

The interim measures being proposed in this rule in combination with the existing regulations are designed to prevent the stock status of petrale sole from falling below the overfished threshold at the beginning of 2011, or to speed the rebuilding of petrale sole if it is found to be overfished. These interim measures are also intended to facilitate rebuilding and to ease negative impacts on industry from the anticipated lower 2011–2012 canary rockfish harvest specifications, and more restrictive management measures.

The Council's policies on setting ABCs, OYs, other harvest specifications, and management measures are discussed in the preamble to the December 31, 2008, proposed rule (73 FR 80516) for 2009–2010 harvest specifications and management measures.

Routine management measures, as described in the preamble to the 2009–2010 harvest specifications and management measure proposed rule (73 FR 80516, December 31, 2008), will continue to be adjusted to modify fishing behavior during the fishing year to allow a harvest specification to be achieved, or to prevent a harvest specification from being exceeded.

The following preamble discussion is divided into two parts: harvest specifications and management measures for petrale sole in 2009 and 2010; and harvest specifications and management measures for canary rockfish in 2010.

## Harvest Specifications and Management Measures for Petrale Sole in 2009–2010

### *2004 Petrale Sole Stock Assessment*

Petrale sole was last assessed in 2004. The result of that stock assessment was the best available science at the time that the 2007–2008 and the 2009–2010 harvest specifications were developed. For additional discussion of the results of the 2004 petrale sole stock assessment, see the September 29, 2006 proposed rule (71 FR 57764). The 2009–2010 ABCs are based on the 2004 stock assessment which used the default F 40 percent FMSY proxy and the 2009–2010 OYs are derived using the 40–10 harvest policy applied to the ABC for both the northern and southern assessment areas. Also an additional 25 percent reduction was made in the OY contribution for the southern area due to assessment uncertainty, as a precautionary measure. The March 6, 2009 final rule (74 FR 9874) established the 2009 and 2010 coastwide petrale sole harvest specifications, including the OYs of 2,433 mt in 2009 and 2,393 mt in 2010.

### *2009 Petrale Sole Stock Assessment*

A new, full stock assessment for petrale sole was presented to the Council at their June 2009 meeting. The draft assessment indicated the stock is depleted to 11.6 percent of its unfished biomass. If the Bmsy management target remained the same as in the 2004 assessment, at 40 percent of the unfished biomass using the proxy for BMSY, the 2009 stock assessment indicates that petrale sole would be overfished in 2011. However, the stock assessment review panel recommended establishing a management target using the biomass that would support maximum sustainable yield (BMSY) as determined from the assessment (referred to as a directly-estimated Bmsy, as opposed to proxy BMSY). This management target was recommended, rather than the standard proxy BMSY, given that BMSY is well estimated. The Groundfish FMP allows use of a directly-estimated BMSY target and defines the overfished level as no less than 50 percent of the directly-estimated BMSY. The draft assessment estimates the stock spawning biomass is at 61 percent of the directly-estimated BMSY and therefore may not be overfished under a directly-estimated BMSY target.

The Council's Scientific and Statistical Committee (SSC) did not recommend the petrale sole assessment for management decision-making at their June 2009 meeting, but will review it further during summer 2009, and it will be presented for final adoption at the Council's September 2009 meeting. The SSC will also further explore the use of a deterministic BMSY target for the stock when they meet this summer. While the petrale sole assessment is not yet adopted for use in making management decisions, projections from the draft assessment indicate that stock spawning biomass will be driven to a lower level of depletion if the entire 2009 and 2010 OYs are taken. If the entire current 2009 and 2010 OYs are taken, by 2011 the spawning biomass is projected to decline to less than 50 percent of directy-estimated BMSY in this case, which is an overfished state even under a deterministic BMSY target.

### *Changes to Petrale Sole Harvest Specifications*

At their June 2009 meeting, the Council identified a point of concern under FMP section 6.2.2 and recommended that NMFS take action to reduce harvest of petrale sole in 2009 and 2010 in response to the preliminary results of the new 2009 stock assessment. The primary purpose of this recommendation is to prevent the status of the petrale sole stock from falling below the overfished threshold at the start of 2011.

In June 2009, the Groundfish Management Team (GMT), an advisory body to the Council, prepared a

preliminary analysis of a range of petrale sole harvest levels for Council consideration. This analysis examined how different levels of petrale sole harvest in 2009 and 2010 affected the petrale sole stock status at the beginning of 2011, under the base case model in the preliminary 2009 petrale sole stock assessment. Based on the results of the GMTs preliminary analysis, the Council chose a preliminary preferred alternative to reduce the existing 2010 petrale sole coastwide OY by 1,200 mt. This action proposes to establish a new 2010 petrale sole coastwide OY of 1,193 mt (Table 2a).

Though this action does not propose a change in harvest specifications for petrale sole in 2009, it does propose changes to management measures in order to reduce projected mortality of petrale sole in 2009 by approximately 400 mt. Implementing management measures that reduce petrale sole catch in 2009, when combined with reductions in the petrale sole OY for 2010 (and concurrent changes to management measures), results in an increase from 9 percent unfished biomass to 13 percent unfished biomass and from 48 percent to 68 percent of the directy-estimated BMSY under the base case model in the preliminary 2009 stock assessment.

Based on the analysis presented above, the Council recommended and NMFS is proposing the following changes to petrale sole harvest specifications: reducing the 2010 petrale sole coastwide OY of 2,393 mt by 1,200 mt, resulting in a new 2010 coastwide petrale sole OY of 1,193 mt. This proposed change is listed in Table 2a to 50 CFR 660, Subpart G.

*Changes to Management Measures Affecting Petrale Sole*

Petrale sole is almost exclusively caught in the limited entry non-whiting commercial trawl fishery. Therefore, proposed changes to management measures are only considered in the limited entry non-whiting trawl fishery. The Council recommended preliminary preferred alternative management measures for November-December 2009 and for January-December 2010 to reduce projected catch of petrale sole by approximately 400 mt in 2009 and to prevent projected mortality of petrale sole from exceeding the preliminary preferred 2010 petrale sole OY. In order to reduce projected catches of petrale sole in 2009 and 2010 this proposed rule adjusts management measures that are routinely adjusted during the year to respond to updated fishery information, as described at § 660.370, and does not impose any new management measures. The Council's preliminary preferred alternative management measures result in approximately 1,995 mt projected catch of petrale sole in 2009 and approximately 1,178 mt projected catch of petrale sole in 2010. Changes to management measures include adjusting the seaward boundary of the trawl RCA coastwide and reducing petrale sole cumulative trip limits and/or sub-limits for all trawl gears coastwide.

Based on the need to reduce catches in 2009 and 2010 to prevent petrale sole stock status from falling below the overfished threshold at the beginning of 2011, the Council recommended and NMFS is proposing changes to management measures in November-December 2009 and for all of 2010. For November-December (Period 6) 2009, the Council recommended and NMFS is proposing the following: shifting the seaward boundary of the trawl RCA to a boundary line approximating the 200–fm (366–m) depth contour North of 40 10' N. lat.; and reducing petrale sole cumulative trip limits and/or sub-limits to 2,000 lb (907 kg) per two months for vessels using all limited entry trawl gear types, coastwide. These proposed 2009 changes are shown in 2009 tables 3 (North) and 3 (South). For 2010, the Council recommended and NMFS is proposing the following: shifting the seaward boundary of the trawl RCA to a boundary line approximating the 200–fm (366–m) depth contour from January-April (Periods 1 and 2) and September-December (Periods 5 and 6) North of 40 10' N. lat.; shifting the seaward boundary of the trawl RCA to a boundary line approximating the 200–fm (366–m) depth contour from January-December South of 40 10' N. lat.; reducing petrale sole cumulative trip limits and/or sub-limits to 1,000 lb (454 kg) per two months for vessels using all limited entry trawl gear types, coastwide, during January-February (Period 1) and November-December (Period 6); reducing petrale sole sub-limits to 18,000 lb (8,165 kg) per two months for vessels using all limited entry trawl gear types, coastwide, from March-October (Periods 2 through 5). These proposed changes to 2010 trip limits are shown in 2010 Tables 3 (North) and 3 (South).

**Harvest Specifications and Management Measures for Canary Rockfish in 2010**

*2007 Canary Rockfish Stock Assessment*

Canary rockfish was last assessed in 2007. The results of that stock assessment and rebuilding analysis were the basis for the 2009–2010 harvest specifications, and represented the best available science at that time. For additional discussion of the results of the 2007 canary rockfish stock assessment, see the December 31, 2008 proposed rule, 73 FR 80516. The 2009–2010 harvest specifications and revisions to the rebuilding plan for canary rockfish were established on March 1, 2009. The approach used for setting the 2009–2010 harvest specifications for canary rockfish was the same as that used for setting the 2007–2008 harvest specifications under FMP Amendment 16–4. The 2007 stock assessment fundamentally changed the understanding of stock productivity. The SSC, therefore, recommended changing the Am. 16–4 rebuilding plan. In the rebuilding plan, the Council revised the target rebuilding year from 2063 to 2021 (which was two years longer than F0), but maintained the existing SPR of 88.7%. Nonetheless, the adopted OY for 2009 and 2010 of 105 mt was based on a more conservative SPR of 92.2%. The March 6, 2009 final rule (74 FR 9874) established the 2009 and 2010 coastwide canary rockfish harvest specifications, including the OYs of 105 mt in 2009 and 2010.

*2009 Canary Rockfish Stock Assessment*

An updated stock assessment for canary rockfish was presented to the Council at their June 2009 meeting. The stock assessment indicated the canary rockfish stock is depleted to 23.7 percent of its unfished biomass, compared with a 32.4 percent depletion in 2007. The stock is increasing, but based on the new information in the new stock assessment, the rebuilding plan will need to be revised, and it is anticipated that lower OYs will be required. The Council's SSC recommended the canary rockfish assessment for management decision-making at their June 2009 meeting. At the November Council meeting the PFMC will receive the rebuilding analysis for canary rockfish based on the 2009 stock assessment, for use in the 2011–2012 specifications process. At that time the Council will also decide whether to recommend a revision to the 2010 canary rockfish OY in order to smooth the transition to the revised rebuilding plan and to facilitate rebuilding.

Changes to 2010 Canary Rockfish OY

At their June 2009 meeting, the Council recommended that NMFS take action to reduce catches of canary rockfish in 2010 in response to the results of the new 2009 stock assessment update. The primary purpose of taking precautionary measures is to facilitate rebuilding of

canary rockfish, and to reduce the socioeconomic impacts of a sudden reduction in harvest specifications that will likely be implemented in 2011. Under the FMP, harvest specifications for species subject to rebuilding requirements may be modified during the biennium if the Council determines they are not adequately conservative to meet rebuilding plan goals. FMP Section 5.5.1

Canary rockfish is currently overfished and subject to a rebuilding plan. The results of the new rebuilding analysis, that will be based on the new stock assessment update, are scheduled to be presented to the Council at their October 31–November 5, 2009, meeting. At that time, while the Council is considering revisions to the rebuilding plan for 2011 and beyond, they will also consider whether changes should be made in 2010 for the reasons explained above.

Based on the need to first consider the new rebuilding analysis for 2011–2012 OYs, the Council has not chosen a preferred canary rockfish OY alternative for 2010. Therefore, a range of OYs between 44 mt and 105 mt is proposed in Table 2a of this proposed rule. No changes to catch apportionment of the new 2010 OY are proposed at this time; however, the Council may consider changes to canary rockfish catch apportionment at their September or November 2009 meetings. A final preferred alternative for canary rockfish OY in 2010 will be considered in a supplement to the EA. Changes to 2010 canary rockfish harvest specifications would be implemented in a separate final rule, after the November 2009 Council meeting. Any revisions are anticipated to be in effect on January 1, 2010.

*Changes to Management Measures Affecting Canary Rockfish*

Canary rockfish are caught incidentally in almost every sector of the Pacific Coast groundfish fishery, North of 34° 27' N. lat. To reduce projected catch of canary rockfish below a lower 2010 OY would likely require that additional restrictions be placed on the following fisheries: limited entry non-whiting trawl; limited entry non-tribal whiting trawl; Washington, Oregon, and northern California recreational groundfish; and nearshore commercial non-trawl. The types of potential management changes include, but are not limited to: expansion of the trawl RCA to close areas with high canary bycatch for all or part of the year; expansion of the non-trawl RCA to close areas with high canary bycatch for all or part of the year; reductions in trip limits for co-occurring shelf species in both the LE trawl fishery and in the LE fixed gear fishery and open access commercial fishery; reductions in trip limits for vessels using selective flatfish trawl gear; reductions in recreational fishery season length; closures of recreational fisheries in some areas of the coast for a portion of the year; reduction in recreational bag limits for rockfish or other co-occurring species; a reduction in the bycatch limit for canary rockfish in the LE non-tribal whiting fishery; and the non-whiting Exempted Fishing Permits (EFPs) may also be restricted or terminated in 2010 to reduce their projected catch of canary rockfish (approximately 2.7 mt).

At their November 2009 meeting where the Council will consider potential changes to the 2010 OY, the Council will consider a wide range of routine management measure alternatives for reducing projected catches of canary rockfish to stay within the new OY. Consideration of new rebuilding information and potential changes to routine management measures will allow the Council to recommend interim measures that would reduce canary rockfish impacts in 2010. A final preferred alternative for canary rockfish management measures in 2010 will be considered in a supplement to the EA. Changes to management measures to reduce projected catch of canary rockfish will be implemented in a separate final rule, after the November 2009 Council meeting. These management measures are anticipated to be in effect on January 1, 2010.

**Classification**

At this time, NMFS has preliminarily determined that the revisions to 2009–2010 harvest specifications and management measures for canary rockfish and petrale sole proposed in this rule are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the final determination, will take into account the data, views, and comments received during the comment period.

A DEA was prepared for the revisions to the 2009–2010 harvest specifications and management measures for petrale sole and canary rockfish. A copy of the DEA is available online at *http://www.nwr.noaa.gov/*.

The Council considered two sets of alternatives for revising the 2009–2010 harvest specifications and management measures for petrale sole and canary rockfish. The first set of alternatives considered more restrictive management measures to reduce catch of petrale sole in 2009 and new harvest specifications for petrale sole in 2010 and management measures necessary to keep projected impacts to petrale sole below the new 2010 OY. The second set of alternatives considered new harvest specifications for canary rockfish in 2010 and a range of management measures necessary to keep projected impacts to canary rockfish below the alternative 2010 OYs.

The range of management measure alternatives intended to keep total catch of canary at the low end of the ABC/OY alternatives are considered here, since these were the alternatives the Council evaluated in the 2009 and 2010 rulemaking for their effects on small entities.

NMFS has initially determined that this proposed rule is not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

The Small Business Administration has established size criteria for all major industry sectors in the US including fish harvesting and fish processing businesses. The RFA recognizes and defines three kinds of small entities: small businesses, small organizations, and small governmental jurisdictions.

Most permit owners and vessel owners are independent fishermen who are owner/operators of their vessel or members of family owned businesses or members of small partnerships. As such, they are considered to be a small business. Because canary rockfish is taken as bycatch in most groundfish fisheries the description of small entities associated with the 2009 EIS (73 FR 80516) is applicable. The Council estimates that nearly 2,600 small entities harvest groundfish. These entities include those that either target groundfish or harvest groundfish as bycatch and include limited entry trawlers and fixed gear, open access participants, the west coast charterboat fleet, and the tribal fleets. Included in this estimate are businesses, probably fewer than 30, that should be classified as ''large'' businesses as they are affiliates or components of large processing companies. Following past practice, the Council classifies the four catcher-processors that fish and process in the whiting fishery ''large'' entities as they are components of large international seafood companies. Noting the exceptions above, the Council has classified all harvesters in the

groundfish fishery as ''small businesses.''

In summary, using Small Business Administration standards, most of the estimated 2,600 entities that harvest groundfish are small businesses. The exceptions are the catcher vessels who also fish off Alaska, some shoreside processors, and all catcher-processors and motherships (less than 30) that are affiliated with larger processing companies or large international seafood companies.

Under the no action petrale sole alternative, groundfish revenues by the non-whiting trawl fleet would be about $28 million in 2009 and in 2010. Under the Council's preferred alternative (P2), the 139 vessels in this fishery would collectively earn $27 million in 2009 and $26 million in 2010. Between 30 and 35 of these vessels would see their revenues fall by more than 5 percent.

By reducing the 2009 petrale sole harvest and the 2010 petrale sole OY, we may prevent petrale sole from being in an overfished status in 2011, or speed the rebuilding of petrale if it is found to be overfished. By reducing the 2010 canary OY we may facilitate rebuilding of canary rockfish and ease the negative impact on industry from the reduced canary rockfish harvest specifications that will likely result in 2011–2012 from the new stock assessment and rebuilding analysis.

There are no reporting, recordkeeping or other compliance requirements in the proposed rule.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the ESA on August 10,1990, November 26,1991, August 28,1992, September 27,1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish.

Since 1999, annual Chinook bycatch has averaged about 8,450 fish. The Chinook ESUs most likely affected by the whiting fishery has generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior ''no jeopardy'' conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMC's Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with Sections 7(a) (2) and 7(d) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

With regards to marine mammals, sea turtles, and seabirds, we are reviewing the available data on fishery interactions and have entered into pre-consultation with the United States Fish and Wildlife Service, NMFS and other Federal agencies. In additions, we have begun discussions with Council staff on the process to address the concerns, if any, that arise from our review of the data.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Indian Fisheries.

Dated: September 8, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

2. Tables 2a and 2c to part 660, subpart G, and footnotes ''/k'' and ''/r'' are revised to read as follows:

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Table 2a. To Part 660, Subpart G-2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

| Species | ABC Specifications | | | | | | OY | HG b/ | |
|---|---|---|---|---|---|---|---|---|---|
| | ABC Contributions by Area | | | | | ABC | | | |
| | Vancouver a/ | Columbia | Eureka | Monterey | Conception | | | Commercial | Recreational |
| ROUNDFISH: | | | | | | | | | |
| Lingcod c/ N of 42 N. lat. | 4,058 | | 771 | | | 4,829 | 4,829 | | |
| S of 42 N. lat. | | | | | | | | | |
| Pacific Cod e/ | 3,200 | | d/ | | | 3,200 | 1,600 | | |
| Pacific Whiting f/ | f/ | | | | | f/ | 134,773 - 404,318 | | |
| Sablefish g/ N of 36 N. lat. | 9,217 | | | | | 9,217 | 6,471 | | |
| S of 36 N. lat. | | | | | | | 1,258 | | |
| Cabezon h/ S of 42 N. lat. | d/ | | 86 | | 25 | 111 | 79 | | |
| FLATFISH: | | | | | | | | | |
| Dover sole | 28,582 | | | | | 28,582 | 16,500 | | |
| English sole j/ | 9,745 | | | | | 9,745 | 9,745 | - | |
| Petrale sole k/ | 1,514 | | 1,237 | | | 2,751 | 1,193 | - | |
| Arrowtooth flounder l/ | 10,112 | | | | | 10,112 | 10,112 | - | |
| Starry Flounder m/ | 1,578 | | | | | 1,578 | 1,077 | | |
| Other flatfish n/ | 6,731 | | | | | 6,731 | 4,884 | - | |
| ROCKFISH: | | | | | | | | | |
| Pacific Ocean Perch o/ | 1,173 | | | | | 1,173 | 200 | 198 | |

| Species | ABC Specifications | | | | | | OY | HG b/ | |
|---|---|---|---|---|---|---|---|---|---|
| | ABC Contributions by Area | | | | | ABC | | Commercial | Recreational |
| | Vancouver a/ | Columbia | Eureka | Monterey | Conception | | | | |
| Shortbelly p/ | 6,950 | | | | | 6,950 | 6,950 | | |
| Widow q/ | 6,937 | | | | | 6,937 | 509 | 447.4 | 7.2 |
| Canary r/ | 940 | | | | | 940 | 44 - 105 | | |
| Chilipepper s/ | d/ | | | 2,576 | | 2,576 | 2,447 | 2,447 | |
| Bocaccio t/ | d/ | | | 793 | | 793 | 288 | 206.4 | 67.3 |
| Splitnose u/ | d/ | | | 615 | | 615 | 461 | | |
| Yellowtail v/ | 4,562 | | | d/ | | 4,562 | 4,562 | | |
| Shortspine thornyhead w/ N of 34 27' N. lat. | 2,411 | | | | | 2,411 | 1,591 | 1,591 | |
| S of 34 27' N. lat. | | | | | | | 410 | | |
| Longspine thornyhead x/ N of 34 27' N. lat. | 3,671 | | | | | 3,671 | 2,175 | | |
| S of 34 27' N. lat. | | | | | | | 385 | | |
| Cowcod y/ | d/ | | | 14 | | 14 | 4 | | |
| Darkblotched z/ | 440 | | | | | 440 | 291 | 288.05 | |
| Yelloweye aa/ | | | | | | 32 | 17 | 3.1 | 8.0 |
| California Scorpionfish bb/ | | | | | 155 | 155 | 155 | | |
| Black cc/ N of 46 16' N. lat. | 464 | | | | | 464 | 464 | | |
| S of 46 16' N. lat. | | | 1,317 | | | 1,317 | 1,000 | | |

* * * * *

| Species | ABC Specifications | | | | | | OY | HG b/ | |
|---|---|---|---|---|---|---|---|---|---|
| | ABC Contributions by Area | | | | | ABC | | Commercial | Recreational |
| | Vancouver a/ | Columbia | Eureka | Monterey | Conception | | | | |
| Minor Rockfish dd/ N of 40 10' N. lat. | 3,678 | | | -- | | 3,678 | 2,283 | | |
| Minor Rockfish ee/ S of 40 10' N. lat. | -- | | | 3,382 | | 3,382 | 1,990 | | |
| Remaining | 1,640 | | | 1,318 | | | | | |
| bank ff/ | d/ | | | 350 | | | | | |
| blackgill gg/ | d/ | | | 292 | | | | | |
| blue | 28 | | | 211 | | | | | |
| bocaccio north | 318 | | | -- | | | | | |
| chilipepper north | 32 | | | -- | | | | | |
| redstripe | 576 | | | d/ | | | | | |
| sharpchin | 307 | | | 45 | | | | | |
| silvergrey | 38 | | | d/ | | | | | |
| splitnose north | 242 | | | -- | | | | | |
| yellowmouth | 99 | | | d/ | | | | | |
| yellowtail | -- | | | 116 | | | | | |
| gopher | d/ | | | 302 | | | | | |
| Other rockfish hh/ | 2,038 | | | 2,066 | | | | | |
| SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING: | | | | | | | | | |
| Longnose Skate ii/ | 3,269 | | | | | 3,269 | 1,349 | | |
| Other fish jj/ | 11,200 | | | | | 11,200 | 5,600 | | |

* * * * *

Table 2c. To Part 660, Subpart G - 2010, and beyond, Open Access and Limited Entry Allocations by Species or Species Group. (Weights in Metric Tons)

| Species | Commercial Total Catch HGs | Commercial Total Catch HGs | | | |
|---|---|---|---|---|---|
| | | Limited Entry | | Open Access | |
| | | Mt | % | Mt | % |
| Lingcod N of 42° N. lat. | -- | -- | 81.0 | -- | 19.0 |
| S of 42° N. lat. | | | | | |
| Sablefish kk/ N of 36° N. lat. | 6,471 | 5,863 | 90.6 | 608 | 9.4 |
| Widow ll/ | -- | -- | 97.0 | -- | 3.0 |
| Canary ll/ | -- | -- | 87.7 | -- | 12.3 |
| Chilipepper | 2,447 | 1,363 | 55.7 | 1,084 | 44.3 |
| Bocaccio ll/ | 206.4 | -- | 55.7 | -- | 44.3 |
| Yellowtail | -- | -- | 91.7 | -- | 8.3 |
| Shortspine thornyhead N of 34°27' N. lat. | 1,591 | 1,586 | 99.7 | 5 | 0.27 |
| Minor Rockfish N of 40°10' N. lat. | -- | -- | 91.7 | -- | 8.3 |
| S of 40°10' N. lat. | -- | -- | 55.7 | -- | 44.3 |

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/k A petrale sole stock assessment was prepared for 2005. In 2005 the petrale sole stock was estimated to be at 32 percent of its unfished biomass coastwide (34 percent in the northern assessment area and 29 percent in the southern assessment area). The 2010 ABC of 2,751 mt is based on the 2005 assessment with a F40% FMSY proxy. To derive the 2010 OY, the 40 10 harvest policy was applied to the ABC for both the northern and southern assessment areas. As a precautionary measure, an additional 25 percent reduction was made in the OY contribution for the southern area due to assessment uncertainty. As another precautionary measure, an additional 1,200 mt reduction was made in the coastwide OY due to preliminary results of the more pessimistic 2009 stock assessment. The coastwide OY is 1,193 mt in 2010.

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/r A canary rockfish stock assessment was completed in 2007 and the stock was estimated to be at 32.7 percent of its unfished biomass coastwide in 2007. The coastwide ABC of 940 mt is based on a FMSY proxy of F50%. The OY of 105 mt is based on a rebuilding plan with a target year to rebuild of 2021 and a SPR harvest rate of 88.7 percent. An OY of 44 mt or 85 mt would be based on a new rebuilding analysis to be considered in November 2009.

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3. Beginning November 1, 2009, Tables 3 (North) and 3 (South) to part 660, subpart G are revised to read as follows:

BILLING CODE 3510–22–S

**Table 3 (North) to Part 660, Subpart G -- 2009 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table** 110109

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[6/]:** | | | | | | |
| 1 | North of 48°10' N. lat. | shore - modified[7/] 200 fm line[6/] | shore - 200 fm line[6/] | shore - 150 fm line[6/] | | shore - 200 fm line[6/] | shore - 200 fm line[6/] |
| 2 | 48°10' N. lat. - 45°46' N. lat. | 75 fm line[6/] - modified[7/] 200 fm line[6/] | 75 fm line[6/] - 200 fm line[6/] | 75 fm line[6/] - 150 fm line[6/] | 100 fm line[6/] - 150 fm line[6/] | 75 fm line[6/] - 200 fm line[6/] | 75 fm line[6/] - 200 fm line[6/] |
| 3 | 45°46' N. lat. - 40°10' N. lat. | | | 75 fm line[6/] - 200 fm line[6/] | 100 fm line[6/] - 200 fm line[6/] | | |
| | Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season. | | | | | | |
| | **See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 4 | **Minor slope rockfish[2/] & Darkblotched rockfish** | 1,500 lb/ 2 months | | | | | |
| 5 | **Pacific ocean perch** | 1,500 lb/ 2 months | | | | | |
| 6 | **DTS complex** | | | | | | |
| 7 | Sablefish | | | | | | |
| 8 | large & small footrope gear | 18,000 lb/ 2 months | | 22,000 lb/ 2 months | 24,000 lb/ 2 months | | 20,000 lb/ 2 months |
| 9 | selective flatfish trawl gear | 5,000 lb/ 2 months | 7,500 lb/ 2months | | 11,000 lb/ 2 months | | |
| 10 | multiple bottom trawl gear[8/] | 5,000 lb/ 2 months | 7,500 lb/ 2months | | 11,000 lb/ 2 months | | |
| 11 | Longspine thornyhead | | | | | | |
| 12 | large & small footrope gear | 22,000 lb/ 2 months | | | | | |
| 13 | selective flatfish trawl gear | 3,000 lb/ 2 months | 5,000 lb/ 2 months | | | | 3,000 lb/ 2 months |
| 14 | multiple bottom trawl gear[8/] | 3,000 lb/ 2 months | 5,000 lb/ 2 months | | | | 3,000 lb/ 2 months |
| 15 | Shortspine thornyhead | | | | | | |
| 16 | large & small footrope gear | 17,000 lb/2 months | | | | | |
| 17 | selective flatfish trawl gear | 3,000 lb/ 2 months | | | | | |
| 18 | multiple bottom trawl gear[8/] | 3,000 lb/ 2 months | | | | | |
| 19 | Dover sole | | | | | | |
| 20 | large & small footrope gear | 110,000 lb/ 2 months | | | | | |
| 21 | selective flatfish trawl gear | 40,000 lb/ 2 months | 45,000 lb/ 2 months | | | | 40,000 lb/ 2 months |
| 22 | multiple bottom trawl gear[8/] | 40,000 lb/ 2 months | 45,000 lb/ 2 months | | | | 40,000 lb/ 2 months |

TABLE 3 (North)

*Table 3 (North). Continued*

| | | | | | | |
|---|---|---|---|---|---|---|
| 23 | **Whiting** | | | | | |
| 24 | midwater trawl | Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED. | | | | |
| 25 | large & small footrope gear | Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip. | | | | |
| 26 | **Flatfish** (except Dover sole) | | | | | |
| 27 | Arrowtooth flounder | | | | | |
| 28 | large & small footrope gear | 150,000 lb/ 2 months | | | | |
| 29 | selective flatfish trawl gear | 90,000 lb/ 2 months | | | | |
| 30 | multiple bottom trawl gear [8/] | 90,000 lb/ 2 months | | | | |
| 31 | Other flatfish [3/], English sole, starry flounder, & Petrale sole | | | | | |
| 32 | large & small footrope gear for Other flatfish [3/], English sole, & starry flounder | 110,000 lb/ 2 months | 110,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole. | 110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole. | 110,000 lb/ 2 months, no more than 5,000 lb/ 2 months of which may be petrale sole. | 110,000 lb/ 2 months |
| 33 | large & small footrope gear for Petrale sole | 25,000 lb/ 2 months | | | | 2,000 lb/ 2 months |
| 34 | selective flatfish trawl gear for Other flatfish [3/]· English sole, & starry flounder | 90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole. | 90,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole. | | 90,000 lb/ 2 months, no more than 5,000 lb/ 2 months of which may be petrale sole. | 90,000 lb/ 2 months, no more than 2,000 lb/ 2 months of which may be petrale sole. |
| 35 | selective flatfish trawl gear for Petrale sole | | | | | |
| 36 | multiple bottom trawl gear [8/] | 90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole. | 90,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole. | | 90,000 lb/ 2 months, no more than 5,000 lb/ 2 months of which may be petrale sole. | 90,000 lb/ 2 months, no more than 2,000 lb/ 2 months of which may be petrale sole. |
| 37 | **Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish** | | | | | |
| 38 | midwater trawl for Widow rockfish | Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED. | | | | |
| 39 | large & small footrope gear | 300 lb/ 2 months | | | | |
| 40 | selective flatfish trawl gear | 300 lb/ month | | 1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish | | 300 lb/ month |
| 41 | multiple bottom trawl gear [8/] | 300 lb/ month | | 300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish | | 300 lb/ month |

TABLE 3 (North) con't

*Table 3 (North). Continued*

| | | | | | |
|---|---|---|---|---|---|
| 42 | **Canary rockfish** | | | | |
| 43 | large & small footrope gear | CLOSED | | | |
| 44 | selective flatfish trawl gear | 100 lb/ month | 300 lb/ month | 100 lb/ month | |
| 45 | multiple bottom trawl gear 8/ | CLOSED | | | |
| 46 | **Yellowtail** | | | | |
| 47 | midwater trawl | Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED. | | | |
| 48 | large & small footrope gear | 300 lb/ 2 months | | | |
| 49 | selective flatfish trawl gear | 2,000 lb/ 2 months | | | |
| 50 | multiple bottom trawl gear 8/ | 300 lb/ 2 months | | | |
| 51 | **Minor nearshore rockfish & Black rockfish** | | | | |
| 52 | large & small footrope gear | CLOSED | | | |
| 53 | selective flatfish trawl gear | 300 lb/ month | | | |
| 54 | multiple bottom trawl gear 8/ | CLOSED | | | |
| 55 | **Lingcod** 4/ | | | | |
| 56 | large & small footrope gear | 1,200 lb/ 2 months | 4,000 lb/ 2 months | | |
| 57 | selective flatfish trawl gear | | 1,200 lb/2 months | | |
| 58 | multiple bottom trawl gear 8/ | | | | |
| 59 | **Pacific cod** | 30,000 lb/ 2 months | 70,000 lb/ 2 months | | 30,000 lb/ 2 months |
| 60 | **Spiny dogfish** | 200,000 lb/ 2 months | 150,000 lb/ 2 months | 100,000 lb/ 2 months | |
| 61 | **Other Fish** 5/ | Not limited | | | |

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 3 (South) to Part 660, Subpart G -- 2009 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table**

110109

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[6/]:** | | | | | | |
| 1 | South of 40°10' N. lat. | 100 fm line[6/] - 150 fm line[6/ 7/] | | | | | |
| | All trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA. | | | | | | |
| | **See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 2 | **Minor slope rockfish[2/] & Darkblotched rockfish** | | | | | | |
| 3 | 40°10' - 38° N. lat. | 15,000 lb/ 2 months | | | 10,000 lb/ 2 months | | 15,000 lb/ 2 months |
| 4 | South of 38° N. lat. | 55,000 lb/ 2 months | | | | | |
| 5 | **Splitnose** | | | | | | |
| 6 | 40°10' - 38° N. lat. | 15,000 lb/ 2 months | | | 10,000 lb/ 2 months | | 15,000 lb/ 2 months |
| 7 | South of 38° N. lat. | 55,000 lb/ 2 months | | | | | |
| 8 | **DTS complex** | | | | | | |
| 9 | Sablefish | 20,000 lb/ 2 months | | | | | |
| 10 | Longspine thornyhead | 22,000 lb/ 2 months | | | | | |
| 11 | Shortspine thornyhead | 17,000 lb/ 2 months | | | | | |
| 12 | Dover sole | 110,000 lb/ 2 months | | | | | |
| 13 | **Flatfish** (except Dover sole) | | | | | | |
| 14 | Other flatfish[3/], English sole, & starry flounder | 110,000 lb/ 2 months | 110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole. | | | 110,000 lb/ 2 months, no more than 5,000 lb/ 2 months of which may be petrale sole. | 110,000 lb/ 2 months |
| 15 | Petrale sole | 50,000 lb/ 2 months | | | | | 2,000 lb/ 2 months |
| 16 | Arrowtooth flounder | 10,000 lb/ 2 months | | | | | |
| 17 | **Whiting** | | | | | | |
| 18 | midwater trawl | Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED. | | | | | |
| 19 | large & small footrope gear | Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip. | | | | | |

TABLE 3 (South)

*Table 3 (South). Continued*

| | | | | | | TABLE 3 (South) con't |
|---|---|---|---|---|---|---|
| 20 | **Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish** | | | | | |
| 21 | large footrope or midwater trawl for Minor shelf rockfish & Shortbelly | 300 lb/ month | | | | |
| 22 | large footrope or midwater trawl for Chilipepper | 5,000 lb/ 2 months | | 12,000 lb/ 2 months | | |
| 23 | large footrope or midwater trawl for Widow & Yelloweye | CLOSED | | | | |
| 24 | small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye | 300 lb/ month | | | | |
| 25 | small footrope trawl for Chilipepper | 5,000 lb/ 2 months | | 12,000 lb/ 2 months | | |
| 26 | **Bocaccio** | | | | | |
| 27 | large footrope or midwater trawl | 300 lb/ 2 months | | | | |
| 28 | small footrope trawl | CLOSED | | | | |
| 29 | **Canary rockfish** | | | | | |
| 30 | large footrope or midwater trawl | CLOSED | | | | |
| 31 | small footrope trawl | 100 lb/ month | 300 lb/ month | | 100 lb/ month | |
| 32 | **Cowcod** | CLOSED | | | | |
| 33 | **Bronzespotted rockfish** | CLOSED | | | | |
| 34 | **Minor nearshore rockfish & Black rockfish** | | | | | |
| 35 | large footrope or midwater trawl | CLOSED | | | | |
| 36 | small footrope trawl | 300 lb/ month | | | | |
| 37 | **Lingcod[4/]** | | | | | |
| 38 | large footrope or midwater trawl | 1,200 lb/ 2 months | 4,000 lb/ 2 months | | | |
| 39 | small footrope trawl | | 1,200 lb/ 2 months | | | |
| 40 | **Pacific cod** | 30,000 lb/ 2 months | 70,000 lb/ 2 months | | 30,000 lb/ 2 months | |
| 41 | **Spiny dogfish** | 200,000 lb/ 2 months | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 42 | **Other Fish[5/] & Cabezon** | Not limited | | | | |

1/ Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
5/ Other fish are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is an area closed to fishing by particulary gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.

* * * * *

4. Beginning January 1, 2010, Tables 3 (North) and 3 (South) to part 660, subpart G are revised to read as follows:

* * * * *

**Table 3 (North) to Part 660, Subpart G -- 2010 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table** 010110

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[6/]:** | | | | | | |
| 1 | North of 48°10' N. lat. | shore - 200 fm line[6/] | | shore - 150 fm line[6/] | | shore - 200 fm line[6/] | shore - 200 fm line[6/] |
| 2 | 48°10' N. lat. - 45°46' N. lat. | 75 fm line[6/] - 200 fm line[6/] | | 75 fm line[6/] - 150 fm line[6/] | 100 fm line[6/] - 150 fm line[6/] | 75 fm line[6/] - 200 fm line[6/] | 75 fm line[6/] - 200 fm line[6/] |
| 3 | 45°46' N. lat. - 40°10' N. lat. | | | 75 fm line[6/] - 200 fm line[6/] | 100 fm line[6/] - 200 fm line[6/] | | |
| | Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season. | | | | | | |
| | **See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 4 | **Minor slope rockfish[2/] & Darkblotched rockfish** | 1,500 lb/ 2 months | | | | | |
| 5 | **Pacific ocean perch** | 1,500 lb/ 2 months | | | | | |
| 6 | **DTS complex** | | | | | | |
| 7 | Sablefish | | | | | | |
| 8 | large & small footrope gear | 18,000 lb/ 2 months | | 22,000 lb/ 2 months | 24,000 lb/ 2 months | | 20,000 lb/ 2 months |
| 9 | selective flatfish trawl gear | 5,000 lb/ 2 months | 7,500 lb/ 2months | | 11,000 lb/ 2 months | | |
| 10 | multiple bottom trawl gear[8/] | 5,000 lb/ 2 months | 7,500 lb/ 2months | | 11,000 lb/ 2 months | | |
| 11 | Longspine thornyhead | | | | | | |
| 12 | large & small footrope gear | 22,000 lb/ 2 months | | | | | |
| 13 | selective flatfish trawl gear | 3,000 lb/ 2 months | 5,000 lb/ 2 months | | | | 3,000 lb/ 2 months |
| 14 | multiple bottom trawl gear[8/] | 3,000 lb/ 2 months | 5,000 lb/ 2 months | | | | 3,000 lb/ 2 months |
| 15 | Shortspine thornyhead | | | | | | |
| 16 | large & small footrope gear | 17,000 lb/2 months | | | | | |
| 17 | selective flatfish trawl gear | 3,000 lb/ 2 months | | | | | |
| 18 | multiple bottom trawl gear[8/] | 3,000 lb/ 2 months | | | | | |
| 19 | Dover sole | | | | | | |
| 20 | large & small footrope gear | 110,000 lb/ 2 months | | | | | |
| 21 | selective flatfish trawl gear | 40,000 lb/ 2 months | 45,000 lb/ 2 months | | | | 40,000 lb/ 2 months |
| 22 | multiple bottom trawl gear[8/] | 40,000 lb/ 2 months | 45,000 lb/ 2 months | | | | 40,000 lb/ 2 months |

TABLE 3 (North)

*Table 3 (North). Continued*

| | | | | |
|---|---|---|---|---|
| 23 | **Whiting** | | | |
| 24 | midwater trawl | Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED. | | |
| 25 | large & small footrope gear | Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip. | | |
| 26 | **Flatfish** (except Dover sole) | | | |
| 27 | Arrowtooth flounder | | | |
| 28 | large & small footrope gear | 150,000 lb/ 2 months | | |
| 29 | selective flatfish trawl gear | 90,000 lb/ 2 months | | |
| 30 | multiple bottom trawl gear [8/] | 90,000 lb/ 2 months | | |
| 31 | Other flatfish [3/], English sole, starry flounder, & Petrale sole | | | |
| 32 | large & small footrope gear for Other flatfish [3/], English sole, & starry flounder | 110,000 lb/ 2 months | 110,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole. | 110,000 lb/ 2 months |
| 33 | large & small footrope gear for Petrale sole | 1,000 lb/ 2 months | | 1,000 lb/ 2 months |
| 34 | selective flatfish trawl gear for Other flatfish [3/], English sole, & starry flounder | 90,000 lb/ 2 months, no more than 1,000 lb/ 2 months of which may be petrale sole. | 90,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole. | 90,000 lb/ 2 months, no more than 1,000 lb/ 2 months of which may be petrale sole. |
| 35 | selective flatfish trawl gear for Petrale sole | | | |
| 36 | multiple bottom trawl gear [8/] | 90,000 lb/ 2 months, no more than 1,000 lb/ 2 months of which may be petrale sole. | 90,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole. | 90,000 lb/ 2 months, no more than 1,000 lb/ 2 months of which may be petrale sole. |
| 37 | **Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish** | | | |
| 38 | midwater trawl for Widow rockfish | Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED. | | |
| 39 | large & small footrope gear | 300 lb/ 2 months | | |
| 40 | selective flatfish trawl gear | 300 lb/ month | 1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish | 300 lb/ month |
| 41 | multiple bottom trawl gear [8/] | 300 lb/ month | 300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish | 300 lb/ month |

TABLE 3 (North) con't

*Table 3 (North). Continued*

| | | | | | |
|---|---|---|---|---|---|
| 42 | **Canary rockfish** | | | | |
| 43 | large & small footrope gear | CLOSED | | | |
| 44 | selective flatfish trawl gear | 100 lb/ month | 300 lb/ month | 100 lb/ month | |
| 45 | multiple bottom trawl gear 8/ | CLOSED | | | |
| 46 | **Yellowtail** | | | | |
| 47 | midwater trawl | Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED. | | | |
| 48 | large & small footrope gear | 300 lb/ 2 months | | | |
| 49 | selective flatfish trawl gear | 2,000 lb/ 2 months | | | |
| 50 | multiple bottom trawl gear 8/ | 300 lb/ 2 months | | | |
| 51 | **Minor nearshore rockfish & Black rockfish** | | | | |
| 52 | large & small footrope gear | CLOSED | | | |
| 53 | selective flatfish trawl gear | 300 lb/ month | | | |
| 54 | multiple bottom trawl gear 8/ | CLOSED | | | |
| 55 | **Lingcod** 4/ | | | | |
| 56 | large & small footrope gear | 1,200 lb/ 2 months | 4,000 lb/ 2 months | | |
| 57 | selective flatfish trawl gear | | 1,200 lb/2 months | | |
| 58 | multiple bottom trawl gear 8/ | | | | |
| 59 | **Pacific cod** | 30,000 lb/ 2 months | 70,000 lb/ 2 months | | 30,000 lb/ 2 months |
| 60 | **Spiny dogfish** | 200,000 lb/ 2 months | 150,000 lb/ 2 months | 100,000 lb/ 2 months | |
| 61 | **Other Fish** 5/ | Not limited | | | |

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 3 (South) to Part 660, Subpart G -- 2010 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table** 010110

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[6/]:** | | | | | | |
| 1 | South of 40°10' N. lat. | 100 fm line[6/] - 200 fm line[6/ 7/] | | | | | |
| | All trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA. | | | | | | |
| | **See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 2 | **Minor slope rockfish[2/] & Darkblotched rockfish** | | | | | | |
| 3 | 40°10' - 38° N. lat. | 15,000 lb/ 2 months | | | 10,000 lb/ 2 months | | 15,000 lb/ 2 months |
| 4 | South of 38° N. lat. | 55,000 lb/ 2 months | | | | | |
| 5 | **Splitnose** | | | | | | |
| 6 | 40°10' - 38° N. lat. | 15,000 lb/ 2 months | | | 10,000 lb/ 2 months | | 15,000 lb/ 2 months |
| 7 | South of 38° N. lat. | 55,000 lb/ 2 months | | | | | |
| 8 | **DTS complex** | | | | | | |
| 9 | Sablefish | 20,000 lb/ 2 months | | | | | |
| 10 | Longspine thornyhead | 22,000 lb/ 2 months | | | | | |
| 11 | Shortspine thornyhead | 17,000 lb/ 2 months | | | | | |
| 12 | Dover sole | 110,000 lb/ 2 months | | | | | |
| 13 | **Flatfish** (except Dover sole) | | | | | | |
| 14 | Other flatfish[3/], English sole, & starry flounder | 110,000 lb/ 2 months | 110,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole. | | | | 110,000 lb/ 2 months |
| 15 | Petrale sole | 1,000 lb/ 2 months | | | | | 1,000 lb/ 2 months |
| 16 | Arrowtooth flounder | 10,000 lb/ 2 months | | | | | |
| 17 | **Whiting** | | | | | | |
| 18 | midwater trawl | Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED. | | | | | |
| 19 | large & small footrope gear | Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip. | | | | | |

TABLE 3 (South)

*Table 3 (South). Continued*

| | | | | | |
|---|---|---|---|---|---|
| 20 | **Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish** | | | | |
| 21 | large footrope or midwater trawl for Minor shelf rockfish & Shortbelly | 300 lb/ month | | | |
| 22 | large footrope or midwater trawl for Chilipepper | 5,000 lb/ 2 months | 12,000 lb/ 2 months | | |
| 23 | large footrope or midwater trawl for Widow & Yelloweye | CLOSED | | | |
| 24 | small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye | 300 lb/ month | | | |
| 25 | small footrope trawl for Chilipepper | 5,000 lb/ 2 months | 12,000 lb/ 2 months | | |
| 26 | **Bocaccio** | | | | |
| 27 | large footrope or midwater trawl | 300 lb/ 2 months | | | |
| 28 | small footrope trawl | CLOSED | | | |
| 29 | **Canary rockfish** | | | | |
| 30 | large footrope or midwater trawl | CLOSED | | | |
| 31 | small footrope trawl | 100 lb/ month | 300 lb/ month | 100 lb/ month | |
| 32 | **Cowcod** | CLOSED | | | |
| 33 | **Bronzespotted rockfish** | CLOSED | | | |
| 34 | **Minor nearshore rockfish & Black rockfish** | | | | |
| 35 | large footrope or midwater trawl | CLOSED | | | |
| 36 | small footrope trawl | 300 lb/ month | | | |
| 37 | **Lingcod[4/]** | | | | |
| 38 | large footrope or midwater trawl | 1,200 lb/ 2 months | 4,000 lb/ 2 months | | |
| 39 | small footrope trawl | | 1,200 lb/ 2 months | | |
| 40 | **Pacific cod** | 30,000 lb/ 2 months | 70,000 lb/ 2 months | 30,000 lb/ 2 months | |
| 41 | **Spiny dogfish** | 200,000 lb/ 2 months | 150,000 lb/ 2 months | 100,000 lb/ 2 months | |
| 42 | **Other Fish[5/] & Cabezon** | Not limited | | | |

TABLE 3 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
5/ Other fish are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is an area closed to fishing by particulary gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ South of 34°27' N. lat., the RCA is 100 fm line - 200 fm line along the mainland coast; shoreline - 200 fm line around islands.

* * * * *

[FR Doc. E9–21960 Filed 9–10–09; 8:45 am]
BILLING CODE 3510–22–C

# Notices

Federal Register

Vol. 74, No. 175

Friday, September 11, 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.

## SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

### No FEAR Act Notice

**AGENCY:** Special Inspector General for Iraq Reconstruction.

**ACTION:** Notice.

**SUMMARY:** This notice fulfills the Special Inspector General for Iraq Reconstruction's (SIGIR) ''No FEAR Act Notice'' **Federal Register** publication obligations, as required by the Section 202(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR) Act and by the Office of Personnel Management implementing regulations at 5 CFR 724.202, to all current and former SIGIR employees and applicants for employment.

**DATES:** This notice is effective September 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Call or e-mail the Deputy General Counsel Kirt West: Telephone—703–604–0489; e-mail—*kirt.west@sigir.mil*.

**ADDRESSES:** SIGIR Deputy General Counsel Kirt West, Special Inspector General for Iraq Reconstruction, 400 Army Navy Drive, Arlington, VA 22202–4704.

**SUPPLEMENTARY INFORMATION:** SIGIR is publishing its initial No FEAR Act notice to inform all employees, former employees, and applicants for employment of their rights under antidiscrimination and whistleblower protection laws, and to advise that it will publish certain statistical data relating to Federal sector equal employment opportunity and other complaints filed with SIGIR.

**Kirt West,**

*Deputy General Counsel, Special Inspector General for Iraq Reconstruction.*

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**List of Notices**

### No FEAR Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' 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.'' Public Law 107–174, Summary.

The law provides that Federal agencies must:

- Notify employees and applicants for employment about their rights under the discrimination and whistleblower laws
- Post statistical data relating to Federal sector equal employment opportunity complaints on its public Web site
- Ensure that their managers have adequate training in the management of a diverse workforce, early and alternative conflict resolution, and essential communications skills
- Conduct studies on the trends and causes of complaints of discrimination
- Implement new measures to improve the complaint process and the work environment
- Initiate timely and appropriate discipline against employees who engage in misconduct related to discrimination or reprisal
- Reimburse the Judgment Fund for any discrimination and whistleblower related settlements or judgments reached in Federal court
- Produce annual reports of status and progress to Congress, the Attorney General and the U.S. Equal Employment Commission.

*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.

SIGIR employees, former employees, or applicants for employment who believe they may have been victims of unlawful discrimination may contact an EEO Counselor at the Department of the Army, Washington Headquarters Service, which serves as the support agent on EEO matters for SIGIR.

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 calendar 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—*http://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 protection 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 for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws 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 SIGIR (e.g., human resources office or legal office) or Army (Washington Headquarters Service). 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).

[FR Doc. E9–21957 Filed 9–10–09; 8:45 am]

BILLING CODE 3710–8N–P

## SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

### Privacy Act of 1974; Notice of Privacy Act Systems of Records

**AGENCY:** Special Inspector General for Iraq Reconstruction.

**ACTION:** Notice.

**SUMMARY:** The Special Inspector for Iraq Reconstruction (SIGIR) has reviewed its management records to identify its Privacy Act systems and to ensure that all such systems are relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority. This is the first notice published by this agency. It includes three SIGIR-wide systems of records including system managers, office titles, addresses, or locations. These are:

SIGIR–1—Investigative Files
SIGIR–2—Hotline Program Case Files
SIGIR–3—Freedom of Information Act and Privacy Act Request and Appeal Files

**DATES:** *Effective:* October 13, 2009.

**FOR FURTHER INFORMATION CONTACT:** Call or e-mail Kirt West, Deputy General Counsel, Telephone 703–604–0489; e-mail *kirt.west@sigir.mil.*

**ADDRESSES:** SIGIR Deputy General Counsel, Office of General Counsel, SIGIR, 400 Army Navy Drive, Arlington, VA 22202–4704.

**SUPPLEMENTARY INFORMATION:** SIGIR has undertaken an agency-wide review of its records to identify all Privacy Act systems of records. As a result of this review, SIGIR is publishing its first Privacy Act systems of records notice, which includes three of its systems.

**Kirt West,**

*Deputy General Counsel, Special Inspector General for Iraq Reconstruction.*

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**List of Notices**

In addition, the SIGIR (and/or the Army as SIGIR's Support Agent) maintains Systems of Records in accordance with the following government-wide Privacy Act Systems of Records Notices.

**Equal Employment Opportunity Commission**

EEOC/GOVT–1—Equal Employment Opportunity in the Federal Government Complaint and Appeal Records

**General Services Administration**

GSA/GOVT–3—Travel Charge Card Program

**Merit Systems Protection Board**

MSPB/GOVT–1—Appeal and Case Records

**Office of Government Ethics**

OGE/GOVT–1—Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records
OGE/GOVT–2—Confidential Statements of Employment and Financial Interests

**Office of Personnel Management**

OPM/GOVT–1—General Personnel Records
OPM/GOVT–2—Employee Performance File System Records
OPM/GOVT–3—Records of Adverse Actions.
OPM/GOVT–5—Recruiting Records
OPM/GOVT–10—Employee Medical File System Records

**Blanket Routine Uses**

Certain ''blanket routine uses'' of the records have been established that are applicable to every record system maintained by SIGIR unless specifically stated otherwise within a particular record system.

**SIGIR Blanket Routine Uses**

*Legal and Law enforcement uses*

1. To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, local, foreign, or international) when the information is relevant to the recipient entity's law enforcement responsibilities.
2. To any individual or entity when necessary to elicit information that will assist an SIGIR investigation, inspection, audit, or other inquiry.
3. To respond to subpoenas in any litigation or other proceeding.
4. To a court, magistrate, administrative tribunal, grand jury, or opposing counsel, in the course of presenting evidence in such proceedings or in settlement negotiations.
5. To attorneys representing subjects of criminal investigations, except when the SIGIR determines that release is inappropriate under Title 5, U.S. Code Sections 552a(j) and (k).
6. To the Integrity Committee of the Council of Inspectors General on

Integrity and Efficiency (CIGIE), another Federal Office of Inspector General, or other Federal law enforcement office in connection with an investigation, inquiry or review conducted pursuant to authorized CIGIE activity.

7. To a Federal agency responsible for considering debarment or suspension action if the record would be relevant to such action.

8. To inform complainants, victims, and witnesses of the status or results of an investigation or inquiry.

9. To inform another agency regarding the status of a case or matter that has been referred by that agency for investigation or other inquiry or that involves a case or matter within the jurisdiction of that agency to notify it of the status of the case or matter or of any decision that has been made or to respond to other inquiries and reports as necessary during the processing of the case or matter.

10. To the news media and the public when there exists a legitimate public interest (*e.g.,* to provide information on events in the criminal process, such as an indictment) or when the IG determines that such disclosure is necessary to preserve confidence in the integrity of the Inspector General process, to demonstrate the accountability of SIGIR employees, officers or individuals covered by the system, or when necessary to prevent an imminent threat to life and property, unless it is determined that release of specific information would constitute an unwarranted invasion of personal privacy.

*Hiring and qualification*

11. To a Federal, State, local, foreign, or international governmental or self-regulatory agency which requires information relevant to a decision concerning the hiring, appointment or retention of an employee or contractor, disciplinary or other administrative action concerning an employee, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

12. To any individual or entity when necessary to elicit information relevant to an SIGIR decision concerning the hiring, appointment, or retention of an individual; the issuance, renewal, suspension or revocation of a security clearance; or the letting of a contract.

*Congress and Other Agencies*

13. To a Congressional office in response to an inquiry made at the request of an individual but only from the record of that individual.

14. To the Department of Justice and/or any component thereof or to the Office of General Counsel of another government entity for the purpose of representing SIGIR or any officer or employee of SIGIR in pending or potential litigation to which the record is pertinent, or to obtain its advice on any matter.

15. To the Office of Management and Budget for the purpose of obtaining its advice on Privacy Act matters.

16. To the Office of Government Ethics (OGE) to comply with agency reporting requirements established by OGE in 5 CFR Part 2638, subpart F.

17. To the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative action programs, compliance with Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan of 1978.

18. To the Merit Systems Protection Board (MSPB), and Office of Special Counsel (OSC), if properly requested in connection with appeals, special studies of the civil service, and other merit system, reviews of rules or regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in Title 5, U.S. Code Sections 1205 and 1206, or as may be authorized by law.

19. To a Federal, State, local, or foreign or international agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in any agency program and to collect debts and overpayments owed to any agency or its components.

20. To a foreign country pursuant to an international treaty or other agreement entered into or ratified by the United States, or to an Executive agreement.

*Contractors and Other Individuals*

21. To independent auditors or other qualified organizations or individuals with which the SIGIR has contracted or agreed to carry out an independent audit, or to provide support for audits, reviews, investigations, peer reviews, or other services. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

22. To such agencies, entities and persons to whom disclosure is reasonably necessary to assist in SIGIR's efforts to respond to suspected or confirmed compromise of and prevent, minimize, or remedy any harm to the security and confidentiality of an SIGIR system of records.

## SIGIR–1

**SYSTEM NAME:**

SIGIR Investigative Files.

**SECURITY CLASSIFICATION:**

The majority of the information in the system is Sensitive but unclassified; however, there is some classified information as well.

**SYSTEM LOCATION:**

Office of the Assistant Inspector General for Investigations, SIGIR, 2011 Crystal Drive, Suite #1101, Arlington, VA 22202–4704. During the course of an investigation, records may also be kept in the investigative field office in Baghdad, Iraq. Contact information for Iraq may be found on *http://www.sigir.mil/contact/Default.aspx.*

**CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:**

In connection with its investigative duties, the SIGIR maintains records on the following categories of individuals:

a. Individuals or entities who are or have been the subject of investigations conducted by the SIGIR, including current and former employees of the SIGIR, Department of Defense (DOD), Department of State (DOS), the United States Agency for International Development (USAID) and other agencies in those areas where SIGIR has jurisdiction; current and former consultants, contractors, and subcontractors with whom the SIGIR or one of the above-mentioned agencies has contracted and their employees; and such other individuals or entities whose association with the SIGIR relates to alleged violation(s) of the Federal rules of conduct, the Civil Service merit system, and/or criminal or civil law, which may affect the integrity or physical facilities of the SIGIR and the agencies and entities in those areas where SIGIR has jurisdiction.

b. Individuals who are or have been witnesses, complainants, or informants in investigations conducted by the SIGIR.

c. Individuals or entities that have been identified as potential subjects of or parties to a SIGIR investigation.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information relating to investigations including:

a. Letters, memoranda, and other documents describing complaints or alleged criminal, civil, or administrative misconduct.

b. Investigative files which include: Reports of investigations and related

exhibits, statements, affidavits, and records obtained during an investigation.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

SIGIR's enabling legislation, § 3001 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Pub. L. 108–106; 117 Stat. 1209, 1234–1238; 5 U.S.C. app. 8G note), as cumulatively amended, and the Inspector General Act of 1978, as amended, Public Law 95–452, 5 U.S.C. App. 3. Title 5 U.S.C. 552 and 552a. Title 5 U.S.C. 301.

**PURPOSE(S):**

The purpose of this system of records is to enable the SIGIR to carry out its mandate under its enabling legislation, as amended, and Inspector General Act, as amended. The system will consist of files and records compiled by the SIGIR on DOD, DOS, USAID, and other Federal employees or other persons who are of interest in an investigation for fraud and abuse with respect to the programs and operations for which SIGIR has jurisdiction.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act the records or information contained therein may specifically be disclosed outside the SIGIR as a ''blanket'' routine use pursuant to 5 U.S.C. 552a(b)(3) as described above.

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

**STORAGE:**

SIGIR Investigative Files consist of paper records maintained in folders, binders and logbooks; various records in electronic form; and an automated data base. The folders, binders and logbooks are stored in SIGIR's file cabinets and offices. The automated data base and electronic records are maintained on a file server and backup tapes in encrypted form.

**RETRIEVABILITY:**

The records are retrieved by the name of the subject of the investigation or inquiry, or by a unique control number assigned to each investigation or inquiry.

**SAFEGUARDS:**

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked file rooms or locked offices at all other times.

**RETENTION AND DISPOSAL:**

The Investigative Files shall be kept in accordance with SIGIR's record retention schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Inspector General for Investigations, SIGIR, 400 Army Navy Drive, Arlington, VA 22202–4704.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Kirt West, Deputy General Counsel, Office of General Counsel, SIGIR, 400 Army Navy Drive, Arlington, VA 22202–4704. The request should contain the individual's full name and address. Requests submitted on behalf of other persons must include their written authorization.

**RECORD ACCESS AND CONTESTING PROCEDURES:**

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of this record may contact Kirt West, Deputy General Counsel, Office of General Counsel, SIGIR, 400 Army Navy Drive, Arlington, VA 22202–4704.

**RECORD SOURCE CATEGORIES:**

Information in these records is supplied by: Individuals including, where practicable, those to whom the information relates; witnesses, corporations and other entities; records of individuals and of the various Federal agencies for which SIGIR has jurisdiction; records of other entities; Federal, foreign, State or local bodies and law enforcement agencies; documents and correspondence relating to litigation; transcripts of testimony; and miscellaneous other sources.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Pursuant to 5 U.S.C. 552a(j)(2), this system of records, to the extent it pertains to the enforcement of criminal laws, is exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2), this system of records to the extent it consists of investigatory material compiled for law enforcement purposes, is exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

## SIGIR–2

**SYSTEM NAME:**

SIGIR Hotline Program Case Files.

**SECURITY CLASSIFICATION:**

The majority of the information in the system is Sensitive but unclassified.

**SYSTEM LOCATION:**

Office of the Deputy Assistant Inspector General for Inspections, SIGIR, 2011 Crystal Drive, Suite #1101, Arlington, VA 22202–4704.

**CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:**

Individuals filing hotline complaints; individuals alleged to have been involved in or witness to criminal or administrative misconduct, including, but not limited to, fraud, waste, or mismanagement.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

In connection with its investigative duties, the SIGIR maintains records resulting from the referral of, and inquiry into, hotline complaints, such as the date of the complaint; the hotline control number; the name of the complainant; the actual allegations; referral documents to other agencies requesting investigation into SIGIR Hotline complaints; referral documents from other agencies transmitting reports, which normally contains the name of the examining official(s) assigned to the case; background information regarding the investigation itself, such as the scope of the investigation, relevant facts discovered, information received from witnesses, and specific source documents reviewed; the investigator's findings, conclusions, and recommendations; and the disposition of the case; and internal SIGIR or other agency Hotline forms documenting review and analysis of SIGIR reports received from other agencies.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

SIGIR's enabling legislation, § 3001 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Pub. L. 108–106; 117 Stat. 1209, 1234–1238; 5 U.S.C. app. 8G note), as cumulatively amended, and the Inspector General Act of 1978, as amended, Public Law 95–452, 5 U.S.C. App. 3. Title 5 U.S.C. 552 and 552a. Title 5 U.S.C. 301.

**PURPOSE(S):**

The purpose of this system of records is to record information related to official hotline investigations; to compile statistical information to disseminate to other agencies, including

the Council of Inspectors General for Integrity and Efficiency (CIGIE); to provide prompt, responsive, and accurate information regarding the status of ongoing cases; and to provide a record of complaint disposition.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act the records or information contained therein may specifically be disclosed outside the SIGIR as a ''blanket'' routine use pursuant to 5 U.S.C. 552a(b)(3), as set forth in SIGIR's System of Records Notice SIGIR–1–Investigative Files.

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

**STORAGE:**

SIGIR Hotline Files consist of paper records maintained in folders, binders and logbooks; various records in electronic form; and an automated data base. The folders, binders and logbooks are stored in SIGIR's file cabinets and offices. The automated data base and electronic records are maintained on a file server and backup tapes in encrypted form.

**RETRIEVABILITY:**

The records are retrieved by the name of the subject of the investigation or inquiry, the name of the complainant, if available, or by a unique control number assigned to each hotline allegation or inquiry.

**SAFEGUARDS:**

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked file rooms or locked offices at all other times. The automated system is password protected, and regular back-ups of data are performed.

**RETENTION AND DISPOSAL:**

Hotline case files are kept in accordance with SIGIR's record retention schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Assistant Inspector General for Inspections, SIGIR, 400 Army Navy Drive, Arlington, VA 22202–4704.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Kirt West, Deputy General Counsel, Office of General Counsel, SIGIR, 400 Army Navy Drive, Arlington, VA 22202–4704. The request should contain the individual's full name and address. Requests submitted on behalf of other persons must include their written authorization.

**RECORD ACCESS AND CONTESTING PROCEDURES:**

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of this record may contact Kirt West, Deputy General Counsel, Office of General Counsel, SIGIR, 400 Army Navy Drive, Arlington, VA 22202–4704.

**RECORD SOURCE CATEGORIES:**

Information in these records is supplied by: Individuals including, where practicable, those to whom the information relates; witnesses, corporations and other entities; records of individuals and of the various Federal agencies for which SIGIR has jurisdiction; records of other entities; Federal, foreign, State or local bodies and law enforcement agencies; documents and correspondence relating to investigations; and miscellaneous other sources.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Pursuant to 5 U.S.C. 552a(j)(2), this system of records, to the extent it pertains to the enforcement of criminal laws, is exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2), this system of records to the extent it consists of investigatory material compiled for law enforcement purposes, is exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

## SIGIR–3

**SYSTEM NAME:**

Freedom of Information Act and Privacy Act Request and Appeal Files.

**SYSTEM LOCATION:**

Office of the Chief Freedom of Information Act Officer, SIGIR, 2011 Crystal Drive, Suite #1101, Arlington, VA 22202–4704.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All persons requesting information from SIGIR or filing appeals under the Freedom of Information Act (FOIA) or Privacy Act.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Copies of each FOIA or Privacy Act request received and of all correspondence related to the requests, including name, affiliation address, telephone numbers, e-mail addresses, and other information about a requester. A computerized index includes the name and affiliation of each requester, the request identification number, and the subject of the request.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title 5 U.S.C. 552 and 552a.

**PURPOSE(S):**

To respond to FOIA and Privacy Act requests and to prepare reports on FOIA and Privacy Act activities.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, the records or information contained therein may specifically be disclosed outside the SIGIR as a ''blanket'' routine use pursuant to 5 U.S.C. 552a(b)(3), as set forth in SIGIR's System of Records Notice SIGIR–1–Investigative Files.

**RECORDS MAY ALSO BE DISCLOSED:**

1. To another Federal agency (a) with an interest in the record in connection with a referral of a Freedom of Information Act (FOIA) request to that agency for its views or decision on disclosure, or (b) in order to obtain advice and recommendations concerning matters on which the agency has specialized experience or particular competence that may be useful to SIGIR in making required determinations under the FOIA.

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

**STORAGE:**

SIGIR FOIA and Privacy Act request and Appeal files consist of paper records maintained in file folders; various records in electronic form; and an automated computer database.

**RETRIEVABILITY:**

The records are retrieved by name of requester and request identification number.

**SAFEGUARDS:**

These records are available only to persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked file rooms or locked offices at all other times. Computer records are maintained in a secure, password protected computer system.

**RETENTION AND DISPOSAL:**

FOIA and Privacy Act Request and Appeal Records are maintained in accordance with SIGIR's records retention schedule.

**SYSTEM MANAGER AND ADDRESS:**

Chief Freedom of Information Act Officer, SIGIR, 400 Army Navy Drive, Arlington, VA 22202–4704.

**NOTIFICATION PROCEDURES:**

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the Chief Freedom of Information Act Officer.

**RECORD ACCESS AND CONTESTING PROCEDURES:**

Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought.

**RECORD SOURCE CATEGORIES:**

Information in these records is supplied by Freedom of Information Act and Privacy Act requesters and related correspondence from the record subject(s) and from SIGIR offices.

[FR Doc. E9–21955 Filed 9–10–09; 8:45 am]
**BILLING CODE 3710–8N–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Six Rivers National Forest, Mad River Ranger District, Ruth, CA; Kelsey Peak Timber Sale and Fuelbreak Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service is proposing the Kelsey Peak Timber Sale and Fuelbreak Project to provide timber products to local economies, reduce tree densities, improve watershed conditions and provide defensible space to improve fire protection and human safety. The Kelsey Peak planning area encompasses approximately 19,245 acres; 18,858 acres are National Forest System (NFS) lands and 398 acres are in private ownership. The project would treat approximately 4,789 acres of NFS lands by harvesting timber through thinning on approximately 2,249 acres and create 2,540 acres of fuel corridors.

**DATES:** Comments concerning the scope of the analysis must be received by October 13, 2009. The Draft Environmental Impact Statement is expected March 2010 and the Final Environmental Impact Statement is expected June 2010.

**ADDRESSES:** Send written comments to Thomas Hudson, Mad River Ranger District, 741 State Highway 36, Bridgeville, CA 95526. Comments may also be sent via e-mail to *comments-pacificsouthwest-six-rivers-mad-river@fs.fed.us*, attention to the Kelsey Peak Project, or via facsimile to (707) 574–6273.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative or judicial reviews.

**FOR FURTHER INFORMATION CONTACT:** Thomas Hudson; Mad River Ranger District, 741 State Highway 36, Bridgeville, CA 95526 or by telephone at (707) 574–6233.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The proposed project would take place within the Upper Mad River watershed on NFS lands administered by the Mad River Ranger District in Trinity County, California. The legal location includes portions of the following areas: T. 20 S., R. 8 E.; T. 30 S., R. 8 E.; and T. 28 N., R. 12 W.; and T. 27 N., R. 12 W.

The Kelsey Peak Project is designed to contribute timber commodity outputs in support of the Six Rivers Forest National Forest Land and Resource Management Plan (LRMP). One of the goals of the LRMP is to provide a stable supply of outputs and services that contribute to local, regional, and national social and economic needs. The Six Rivers National Forest seeks to provide a sustainable, predictable, long-term timber supply for local economies.

Tree densities within many stands greatly exceed desired stocking levels. Overstocked stands can be unhealthy with low resistance to insect and disease outbreaks. Overstocked small young stands will take much longer to grow into larger mature trees, increasing the amount of time needed to balance size classes across the landscape.

The project area lies within the Mad River Watershed, which has been listed as water quality impaired. The primary sources of sediment are thought to be the current road conditions.

The project planning area occurs within portions of the wildland-urban interface for the communities of Ruth and Three Forks, CA. Numerous homes and several businesses contribute to the high economic value ranking in the area. Fuel hazards here are moderate, but fire risk is high due to the number of people in the area.

Sensitive wildlife and plant species and survey and manage botanical species are known to occur within the planning area.

#### Purpose and Need for Action

Given Forest goals, and environmental conditions within the planning area, the purpose and need for the proposed action is:

- Provide timber commodities that contribute towards the Forest's Allowable Sale Quantity as part of the Forest's obligation to sustain the local rural economy.
- Where stands are overstocked, reduce tree densities to increase stand vigor and resilience to fire and disease and increase growth rates that would lead to a more balanced age/size class distribution.
- Improve water quality within the watershed.
- Provide defensible space along strategic road corridors to improve fire protection and human safety for both the Forest and adjacent communities.

Within the context of meeting the purpose and need, there would be opportunities for fuelwood or biomass utilization associated with proposed activities.

#### Proposed Action

The proposed action is designed to meet the project's purpose and need while meeting the standards and guidelines of the LRMP. The Kelsey Peak Timber Sale and Fuelbreak Project would treat vegetation to meet the purpose and need.

1. Approximately 20 million board feet (MMBF) of timber would be harvested from approximately 2,249

acres within 98 treatment units. Harvesting would be accomplished by utilizing ground-based, skyline, and helicopter logging systems. Actions connected with commercial timber harvest include:

a. Treating harvest activity generated fuel;

b. Constructing approximately 1.9 miles of new temporary road, and re-opening/re-utilizing approximately 5.1 miles of existing non-system roads;

c. Constructing new landings and reutilization of existing landings;

d. Hauling of commercial timber products on County Road 501 and Forest Service System roads within the planning area;

e. Felling and removal, where appropriate, of hazard trees along haul routes; and

f. Decommissioning, maintaining, and reconstructing roads as needed.

2. Fuelbreaks or corridors would be strategically placed along 39 miles of road.

**Responsible Official**

The responsible official is the Forest Supervisor, Six Rivers National Forest.

**Nature of Decision To Be Made**

The responsible official will decide whether to implement the proposed action, no action or other alternatives considered under analysis. He will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

**Scoping Process**

This Notice of Intent initiates the scoping process, which guides the development of the Environmental Impact Statement. Public scoping will include notices in the newspaper of record and mailings of the scoping package to interested and affected parties and posting of the project on the Six Rivers National Forest project planning web page and notice in the Quarterly Schedule of Proposed Actions.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the Environmental Impact Statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: September 2, 2009.

**Nancy J. Gibson,**

*Acting Forest Supervisor, Six Rivers National Forest.*

[FR Doc. E9–21808 Filed 9–10–09; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Gila National Forest; New Mexico; Gila National Forest Travel Management Rule Implementation

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Gila National Forest will prepare an Environmental Impact Statement to evaluate a proposed action that would implement the agency's Travel Management Rule (TMR). The proposed action would eliminate cross country travel by motorized vehicle and designate a system of roads, trails and areas open for motorized vehicle use. Motor vehicle access for purposes such as motor vehicle-based dispersed camping and big game retrieval of deer and elk are also described. The Rule provides for certain exemptions such as emergency use, law enforcement, those holding a specific written authorization, and limited Forest Service administrative use.

The full text and maps of the proposed action will located on the Forest's Web site at *http://fs.usda.gov/gila* (Click on the link to Travel Management Rule).

The designated routes and areas will be published on a Motor Vehicle Use Map (MVUM) available free of charge to the public in accordance with the Travel Management Rule. The MVUM will be the primary tool for compliance and enforcement.

**DATES:** Comments concerning the scope of the analysis must be received by October 26, 2009. The Draft Environmental Impact Statement is expected in May 2010 and the Final Environmental Impact Statement is expected September 2010.

**ADDRESSES:** Send written comments to Gila National Forest, Attn: Travel Management Coordinator, 3005 E. Camino del Bosque, Silver City, NM 88061. Comments may also be sent via e-mail to *r3_gila_travel@fs.fed.us,* or via facsimile to (575) 388–8222. Electronic attachments must be in one of the following formats: .doc, .rtf, .txt, or .pdf.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

**FOR FURTHER INFORMATION CONTACT:** Lisa Mizuno, Travel Management Coordinator, at (575) 388–8267 or *r3_gila_travel@fs.fed.us.* The proposed action, maps, and other pertinent information about this project can be found on the Forest's Web site: *http://fs.usda.gov/gila* (click on link to Travel Management Rule).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**Purpose and Need for Action**

There is a need to comply with 36 CFR 212.51(a) which requires the forest to designate a system of roads, trails and areas for vehicle use by vehicle class, and if appropriate by time of year.

- There is a need to manage motorized vehicle use on NFS lands on the Gila National Forest in accordance with the provisions of the Travel Management Rule and 36 CFR parts 212, 251, and 261.
- There is a need to comply with 36 CFR 261.13 which requires that forests prohibit motor vehicle use off the system of designated roads, trails and areas (close the forest to motorized cross-country travel).
- There is a need to amend the Forest Plan to comply with the Travel Management Rule.

**Proposed Action**

During 2009–2010, the Gila National Forest will evaluate the proposed action and alternative(s), with a decision expected in September 2010.

As required by TMR, the Forest utilized the following information in developing the proposed action: Public input on needs and desires; resource resilience and sensitive areas; traditional uses and forest access; and effects to natural resources. Maps and tables show the elements of the proposed action that is described below: Maps can be found at *http://fs.usda.gov/*

*gila* (Click on link to Travel Management Rule).

The Forest proposes to:

- Close the Forest to motorized cross-country travel.
- Add 8.3 miles of unauthorized routes and designate as National Forest System (NFS) roads open to all vehicle types.
- Re-open 3 miles of NFS closed roads to all vehicle types.
- Change vehicle type on 31.5 miles of NFS roads to highway legal vehicles only. Highway legal vehicles are those motor vehicles licensed under State law for general operation on all public roads within the State.
- Change time of year on 2.8 miles of NFS roads to be designated seasonally open, for all vehicle types, from April 1 through September 1.
- Change the use on 275 miles of existing NFS roads from open to all motorized traffic to open for periodic administrative use or specific permitted uses only.
- Close 962 miles of open NFS roads to all motorized vehicle uses.
- Add 55 miles of unauthorized routes and designate as National Forest System (NFS) trails for motorized vehicles less than 50 inches in width.
- Convert 23 miles of NFS closed or decommissioned roads to NFS trails for motorized vehicles less than 50 inches in width.
- Convert 97 miles of NFS roads to NFS trails for motorized vehicles less than 50 inches in width.
- Convert 5 miles of NFS closed or decommissioned roads to NFS trails for foot/horse use.
- Convert 24 miles of NFS roads to NFS trails for foot/horse use.
- Change 1 mile of motorized NFS trail to foot/horse use.
- For the purpose of motorized dispersed camping, designate a specified distance of 300 feet on each side of:
  - 1,513 miles of designated open forest roads,
  - 1 mile of unauthorized roads, and
  - 6 miles of county roads.
- Designate a specified distance of 1 mile on each side of open forest roads, county roads, and State and Federal highways on Gila National Forest system lands for the purpose of motorized big game retrieval.
- Designate 113.5 acres open to all motorized vehicle use.

**Methods and Descriptions**

The above describes the elements of the proposed action. The following describes methods and definitions of components of the proposed action:

*Converting Roads to Motorized or Non-Motorized Trails*

The conversion of roads to motorized or non-motorized trails would entail such things as signing, restricting access based on type of trail designation, and using mechanical equipment to define or establish applicable tread width over the length.

*Motorized Dispersed Camping*

In the Gila National Forest, motorized dispersed camping is mostly characterized as vehicles towing travel trailers or other types of trailers and driving off of roads some distance and setting up camp. Activities or the make-up of the camp often centers around the vehicle or trailers. The TMR allows for the designation of motor vehicle use within specified distances of certain designated routes, solely for the purposes of dispersed camping (36 CFR 212.51(b)).

To continue this type of camping opportunity in the Forest, motor vehicles may be driven 300 feet off of each side of certain designated roads for purposes of motorized dispersed camping and would be displayed on the Motor Vehicle Use Map (MVUM). A total of 1,520 miles of Forest and County roads would be available for motorized dispersed camping.

Dispersed camping such as tent camping may occur anywhere on the Forest. Parking for this type of dispersed camping may occur along any designated open road. Parking would be limited to one vehicle length, including any towed trailer, from the side of the road. Parking should occur where it is safe to park (*e.g.* traffic), does not cause resource damage (*e.g.* ruts), or not already restricted.

*Big Game Retrieval*

The Forest proposes to designate a specified distance of 1 mile from each side of designated open roads, county roads, and State and Federal highways for the purpose of retrieving a downed big game animal, specifically limited to deer and elk. Hunters must possess a valid deer or elk license for game management units (GMU) 15, 16A, 16B, 16C, 16D, 21A, 22, 23, and 24.

Motorized big game retrieval only applies to those portions of GMU 15, 16A, 16B, 16C, 16D, 21A, 22, 23, and 24 that are within the Gila National Forest boundary. The use of motorized vehicles to retrieve a legally harvested and tagged deer or elk is limited to a distance of one mile either side of Forest open roads, county roads, and State and Federal highways. The distance of one mile applies only to Gila National Forest System lands. Motorized vehicles are prohibited where the one mile distance is within:

- National Forest Wilderness areas (36 CFR 261.18);
- National Forest Primitive areas (36 CFR 261.21);
- Restricted roads, trails, or areas specified in forest orders (36 CFR 261.50).

All applicable New Mexico big game hunting regulations must be followed. To protect forest resources on Forest designated open roads or off the designated road system (cross-country), applicable laws or regulations must be followed, such as:

- Roads should not be damaged and left in a damaged condition (36 CFR 261.12(c)).
- Retrieval of big game should take a relatively direct and safe route (R3 TMR Guidelines, June 2008).
- Motor vehicle use off road should not damage or unreasonably disturb the land, wildlife, or vegetative resources (36 CFR 261.15(h)).
- Use the minimum number of trips to retrieve a downed animal (R3 TMR Guidelines, June 2008).
- Only one vehicle would be allowed for game retrieval per harvested animal (R3 TMR Guidelines, June 2008).
- Motor vehicle use should not damage any natural feature or other property of the United States (36 CFR 261.9(a)).

**Forest Plan Amendments**

Two Forest Land Management Plan (LMP) amendments are needed to bring both the LMP up to date with current management of the Forest and to be in compliance with the Travel Management Rule and proposal. The following LMP amendments would be implemented:

1. The following site specific language found in Management Area (MA) 4B (pg. 131 and 139) and MA 4C (page 129) would be removed.

a. ''Area above Mule Creek to remain open to all entry year-round.''

b. ''Hells Hole will remain open to vehicle use, but because of topography, vehicle use will not occur in most portions of the area.''

Motorized vehicle designations would be detailed in the final TMR decision. In the proposed action, there is a proposed designated route above the Mule Creek area and no cross-country motor vehicle use is allowed. Hells Hole would be closed to cross-country motor vehicle use.

1. Amend the Gila National Forest LMP to add or remove language from the Recreation Standards and Guidelines related to the ORV Policy to

be consistent with the Travel Management Rule. For more information on the full text, see the **FOR FURTHER INFORMATION** section.

**Lead and Cooperating Agencies**

The U.S. Forest Service—Gila National Forest is the lead agency. Catron County, NM; Hidalgo County, NM; Grant County, NM; and Sierra County, NM are cooperating agencies.

**Responsible Official**

The Responsible Official is the Gila Forest Supervisor.

**Nature of Decision To Be Made**

The decision to be made is how to implement the Travel Management Rule. The responsible official will decide whether to implement the proposed action or an alternative to the proposed action. The decision to be made will also determine whether or not to implement two proposed Forest Plan amendments.

**Scoping Process**

This Notice of Intent initiates the scoping process, which guides the development of the Environmental Impact Statement. Ten open houses are planned for the purpose of providing information to the public regarding this proposed action and soliciting comments. Open houses are scheduled for September 19, 2009, 10 a.m.–4 p.m., Las Cruces, NM, location TBA; September 22, 2009, 3–8 p.m., Glenwood, NM, Glenwood School; September 23, 2009, 3–8 p.m., Mimbres, NM, location TBA; September 24, 2009, 3–8 p.m., Reserve, NM, Reserve Ranger District Office; September 25, 2009, 3–8 p.m., Cliff, NM, location TBA; September 26, 2009, 10 a.m.–5 p.m., Silver City, NM, County Convention Center; September 29, 2009, 3–8 p.m., Truth or Consequences, NM, Black Range District Office; October 1, 2009, 3–8 p.m., Luna, NM, Luna Community Center; October 2, 2009, 3–8 p.m., Quemado, NM, Quemado High School; October 3, 2009, 10 a.m–12 noon, Lordsburg, NM, location TBA. Information can also be obtained at the following Web site: *http://fs.usda.gov/gila* (Click on link to Travel Management Rule).

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: September 2, 2009.

**Richard E. Markley,**

*Forest Supervisor.*

[FR Doc. E9–21851 Filed 9–10–09; 8:45 am]

BILLING CODE P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Public Meeting, Davy Crockett National Forest Resource Advisory Committee

**SUMMARY:** In accordance with the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393), [as reauthorized as part of Pub. L. 110–343] and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of Agriculture, Forest Service, Davy Crockett National Forest Resource Advisory Committee (RAC) meeting will meet as indicated below.

**DATES:** The Davy Crockett National Forest RAC meeting will be held on Tuesday, September 22, 2009.

**ADDRESSES:** The Davy Crockett National Forest RAC meeting will be held at the Davy Crockett Ranger Station located on State Highway 7, approximately one-quarter mile West of FM 227 in Houston County, Texas. The meeting will begin at 6 p.m. and adjourn at approximately 8 p.m. A public comment period will begin at 7:45 p.m.

**FOR FURTHER INFORMATION CONTACT:** Gerald Lawrence, Jr., Designated Federal Officer, Davy Crockett National Forest, 18551 State Hwy. 7 E., Kennard, TX 75847: *Telephone:* 936–655–2299 ext. 225 or e-mail at: *glawrence@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The Davy Crockett National Forest RAC proposes projects and funding to the Secretary of Agriculture under Section 203 of the Secure Rural Schools and Community Self Determination Act of 2000, (as reauthorized as part of Pub. L. 110–343). The purpose of the September 22, 2009 meeting is to primarily discuss the Groveton-Phase I Projects proposed by the Forest Service, and new projects proposed by the RAC. These meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time, as identified above, for persons wishing to comment. The time for individual oral comments may be limited.

**Gerald Lawrence, Jr.,**

*Designated Federal Officer, Davy Crockett National Forest RAC.*

[FR Doc. E9–21785 Filed 9–10–09; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### University of Oklahoma, et al., Notice of Consolidated Decision on Applications for Duty–Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue., NW, Washington, D.C.

*Docket Number: 09–019.* Applicant: University of Oklahoma, Norman, OK 73019. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 74 FR 37979, July 30, 2009.

*Docket Number: 09–027.* Applicant: National Renewable Energy Laboratory, Golden, CO 80401. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 74 FR 37979, July 30, 2009.

*Docket Number: 09–042.* Applicant: Temple University Hospital, Philadelphia, PA 19140. Instrument: Electron Microscope. Manufacturer: JEOL, Japan. Intended Use: See notice at 74 FR 37979, July 30, 2009.

*Docket Number: 09–043.* Applicant: University of Central Florida, Orlando, FL 32816. Instrument: Electron Microscope. Manufacturer: Tescan, s.r.o., Czech Republic. Intended Use: See notice at 74 FR 37979, July 30, 2009.

*Docket Number: 09–044.* Applicant: Missouri State University, Springfield, MO 65897. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 74 FR 37979, July 30, 2009.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign

instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: September 4, 2009.

**Christopher Cassel,**

*Acting Director, Subsidies Enforcement Office, Import Administration.*

[FR Doc. E9–21964 Filed 9–10–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XR49**

### Incidental Takes of Marine Mammals During Specified Activities; Harbor Activities Related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA

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

**ACTION:** Notice; issuance of incidental harassment authorization.

**SUMMARY:** In accordance with the provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to United Launch Alliance (ULA) to take small numbers of marine mammals, by Level B harassment only, incidental to harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at south Vandenberg Air Force Base, CA (VAFB).

**DATES:** This authorization is effective from September 4, 2009, through September 3, 2010.

**ADDRESSES:** A copy of the IHA and the application are available by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application may be obtained by writing to this address, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody or Candace Nachman, (301) 713–2289 or Monica DeAngelis, NMFS Southwest Region, (562) 980–3232.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals, for periods of not more than one year, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat and monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Section 101(a)(5)(D) of the MMPA establishes a 45–day time limit for NMFS' review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in Section 101(a)(5)(D)(i) of the MMPA, the Secretary shall issue or deny issuance of the authorization with appropriate conditions to meet the requirements of clause 101(a)(5)(D)(ii) of the MMPA.

### Summary of Request

On June 5, 2009, NMFS received an application from ULA requesting an authorization for the harassment of small numbers of Pacific harbor seals (Phoca vitulina richardsi) and California sea lions (Zalophus californianus) and northern elephant seals (Mirounga angustirostris) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. These activities will support Delta IV/EELV launch activities from the Space Launch Complex at VAFB. NMFS outlined the purpose of the program in a previous notice for the proposed IHA (74 FR 32565, July 8, 2009). The activities to be conducted have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA.

### Description of the Specified Activity

NMFS has issued Incidental Harassment Authorizations (IHAs) to The Boeing Company, now ULA, on May 15, 2002 (67 FR 36151, May 23, 2002), May 20, 2003 (68 FR 36540, June 18, 2003), May 20, 2004 (69 FR 29696, May 25, 2004), May 23, 2005 (70 FR 30697, May 27, 2005), June 20, 2006 (71 FR 36321, June 26, 2006), June 21, 2007 (72 FR 34444, June 22, 2007), and August 19, 2008 (73 FR 49649, August 22, 2008) each for a one-year period. ULA did not conduct any dredging activities between 2003 and 2008, and accordingly, was not required to conduct any monitoring activities.

### Specified Activities

*Delta Mariner* off-loading operations and associated cargo movements will occur a maximum of three times per year. The activities will take place within the harbor located within the VAFB, approximately 2.5 miles (mi) (4.02 kilometers (km) south of Point Arguello, CA and approximately 1 mi (1.61 km) south of the nearest marine mammal pupping site (i.e., Rocky Point).

**Delta Mariner Operations**

The *Delta Mariner* is a 312–feet (ft) (95.1–meter (m)) long, 84–ft (25.6–m) wide steel hull ocean-going vessel capable of operating at an 8–ft (2.4–m) draft. The vessel will enter the harbor stern first, during daylight hours at high tide, approaching the wharf at less than 0.75 knot. At least one tugboat will always accompany the *Delta Mariner* during visits to the VAFB harbor. Departure will occur under the same conditions.

Sources of noise from the *Delta Mariner* include ventilating propellers used for maneuvering the vessel into position and a brief sound from the cargo bay door when it becomes disengaged.

**Harbor Maintenance Dredging**

To accommodate the *Delta Mariner*, the harbor will need to be dredged, removing up to 5,000 cubic yards of sediment per dredging. Dredging will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. ULA estimates that the noise levels emanating from within 50 ft of the dredging and construction equipment would range from 56 to 93 decibels (dB) (A-weighted) (re 20 FPascals at 1–m). Thus, there is the potential that an animal hauled out on the beach or breakwater could hear the dredging activities. Dredge operations, from set-up to tear-down, would continue 24–hours a day for three to five weeks. Sedimentation surveys have shown that initial dredging indicates that maintenance dredging should be required annually or twice per year, depending on the hardware delivery schedule.

A more detailed description of the work proposed for 2009–2010 is contained in the application, which is available upon request (see **ADDRESSES**), and in the Final U.S. Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

**Cargo Movement Activities**

The Delta IV/EELV launch vehicle is comprised of a common booster core (CBC) and other mechanical elements. Removal of the CBC from the vessel requires the use of an elevating platform transporter (EPT). ULA measured the EPT's sound levels within 20 ft of the exhaust pipe with the engine running at mid-speed and observed sound levels of 85 dB (re 20 FPascals at 1–m) (Acentech, 1998). The removal procedure requires two short (approximately 1/3 second) beeps of the horn prior to starting the ignition. The sound level of the EPT horn ranged from 62 to 70 dB A-weighted at 200 ft (60.9 m) away, and 84 to 112 dB A-weighted at 25 ft (7.6 m) away.

For cargo other than the CBC, ULA will use a standard diesel truck tractor to offload containers containing flight hardware items from the *Delta Mariner*. The tractor would generate a sound level of approximately 87 dB A-weighted at 50 ft (15.2 m) while in operational mode. Total docking and cargo movement activities is estimated to last approximately no more than 18 hours in good weather.

A more detailed description of the work proposed for 2008 is contained in the application which is available upon request (see **ADDRESSES**) and in the Final U.S. Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

**Comments and Responses**

NMFS published a notice of receipt of the ULA application and proposed IHA in the **Federal Register** on July 8, 2009 (74 FR 32565). During the 30–day public comment period, NMFS received one comment from the public and comments from the Marine Mammal Commission (Commission). Following are the comments from the Commission and the public commenter and NMFS' responses.

*Comment 1:* The Commission recommends that NMFS approve the request provided that all reasonable measures will be taken to ensure the least practicable impact on the subject species and the required mitigation and monitoring activities are carried out as described in the July 8, 2009 **Federal Register** notice and the IHA application.

*Response:* NMFS agrees with the Commission's recommendation, and all monitoring and mitigation measures described in the previous **Federal Register** notices (67 FR 36151, May 23, 2002), (68 FR 36540, June 18, 2003), (69 FR 29696, May 25, 2004), (70 FR 30697, May 27, 2005), (71 FR 36321, June 26, 2006), (72 FR 34444, June 22, 2007), and (73 FR 49649, August 22, 2008) are required in the current IHA.

*Comment 2:* One commenter opposed the project on the grounds that it would cause injury or mortality.

*Response:* As described in detail in the **Federal Register** notice of receipt of the application (74 FR 32565, July 8, 2009), no marine mammal will be killed or injured as a result of the operations by ULA. The project would only result Level B behavioral harassment of a small number of. No take by Level A harassment (injury) or death is anticipated nor authorized from this project.

**Marine Mammals Affected by the Activity**

The marine mammal species likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal, California sea lion, and northern elephant seal, which haul out in the area where these activities are conducted. None of the haul-out areas near these activities are used for breeding, molting, or mating. A more detailed discussion of the status of these stocks and their occurrence at VAFB, as well as other marine mammal species that occur at VAFB, was included in the notice of the proposed IHA (74 FR 32565, July 8, 2009).

**Potential Effects of Activities on Marine Mammals**

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* off-loading operations, dredging, and kelp habitat mitigation and the increased presence of personnel, may cause short-term disturbance to harbor seals and California sea lions hauled out on the beach and rocks near south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. NMFS anticipates that no injury will result from these actions. A discussion of the sound levels produced by the equipment, behavioral reactions of marine mammals to loud noises or looming visual stimuli, and some specific observations of the response of marine mammals to this activity gathered during previous monitoring were presented in the notice of proposed IHA (74 FR 32565, July 8, 2009) and is not repeated here. For a further discussion of anticipated effects of the planned activities on pinnipeds in the area, refer to the application, NMFS' 2005 Environmental Assessment (EA) and ENSR International's 2001 Final EA.

**Numbers of Marine Mammals Expected to be Harassed**

ULA estimates that a maximum of 43 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 21 seals sighted when tidal conditions were favorable during previous harbor dredging operations. Considering the maximum and average number of seals hauled out per day, assuming that the seals may be seen twice a day, and using a maximum total

of 73 operating days in 2009–2010, NMFS estimates that a maximum of 767 to 1,570 Pacific harbor seals may be subject to Level B harassment out of a total estimated population of 31,600. These numbers are small relative to this population size (2.4 - 5 percent).

During wharf modification activities, a maximum of six California sea lions were seen hauling out in a single day. Based on the above-mentioned calculation, NMFS believes that a maximum of 219 California sea lions may be subject to Level B harassment out of a total estimated population of 238,000. These numbers are small relative to this population size (less than 0.1 percent).

Up to 10 northern elephant seals (because they may be present in nearby waters) may be subject to Level B harassment out of a total estimated population of 124,000 in 2005. These numbers are small relative to this population size (less than 0.01 percent).

**Possible Effects of Activities on Marine Mammal Habitat**

ULA does not anticipate any loss or modification to the habitat used by Pacific harbor seals or California sea lions that haul out near the south VAFB harbor. The harbor seal and sea lion haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals or California sea lions in the area to reproduce.

ULA anticipates unavoidable kelp removal during dredging. This habitat modification will not affect the marine mammal habitat. However, ULA will mitigate for the removal of kelp habitat by placing 150 tons of rocky substrate in a sandy area between the breakwater and the mooring dolphins to enhance an existing artificial reef. This type of mitigation was implemented by the U.S. Army Corps of Engineers following the 1984 and 1989 dredging.

The anticipated negative effects of dredging and kelp mitigation (short-term increase in noise and sedimentation) will be short-term and are not expected to result in a loss or modification to the habitat used by Pacific harbor seals, California sea lions, or northern elephant seals that haul out near the south VAFB harbor. Additional details were provided in the notice of proposed IHA (74 FR 32565, July 8, 2009).

**Mitigation**

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities, ULA and/or its designees will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling pinnipeds at night.

(2) Activities will be initiated before dusk.

(3) Construction noises will be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present.

(4) If activities cease for longer than 30 minutes and pinnipeds are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A NMFS-qualified marine mammal observer will visually monitor the pinnipeds on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of ULA's activities (see Monitoring).

(6) To the extent possible, the *Delta Mariner* and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks. The vessel will reduce speed 1.5 to 2 knots (2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and mooring dolphins at less than 0.75 knot (1.4 km/hr).

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

**Monitoring**

As part of its 2002 application, Boeing, now ULA, provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed. NMFS is requiring the same plan for this IHA.

A NMFS-qualified and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for pinnipeds to haul out (2 ft, 0.61 m, or less).

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Monitoring results from previous years of these activities have been reviewed and incorporated into the analysis of potential effects in this document, as well as the take estimates.

**Reporting**

ULA will notify NMFS two weeks prior to initiation of each activity. ULA will submit a draft report on all activities, 120 days prior to the expiration of this Authorization if a new Authorization will be requested for 2010–2011, and a final report within 120 days after the expiration of this Authorization, regardless of whether or not a new Authorization will be requested. The report will provide dates, times, durations and locations of specific activities, details of pinniped behavioral observations, and estimates of numbers of affected pinnipeds and impacts (behavioral or other). In addition, the report will include information on the weather, tidal state, horizontal visibility, and composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, ULA or its designee shall cease operations immediately and report the incident to NMFS immediately.

**Endangered Species Act (ESA)**

This action will not affect species listed under the ESA that are under the jurisdiction of NMFS. VAFB formally consulted with U.S. Fish and Wildlife Service in 1998 on the possible take of southern sea otters during Boeing's, now ULA, harbor activities at south VAFB. A Biological Opinion was issued in August 2001, which concluded that the EELV Program is not likely to jeopardize the continued existence of the southern sea otter and no injury or mortality is expected. The activities covered by this IHA are analyzed in that Biological Opinion, and this IHA does not modify the action in a manner that was not previously analyzed.

**National Environmental Policy Act**

In 2001, the United States Air Force (USAF) prepared an EA for harbor activities associated with the Delta IV Program at VAFB. In 2005, NMFS prepared an EA supplementing the information contained in the USAF EA and issued a Finding of No Significant Impact (FONSI) on the issuance of an IHA for Boeing's, now ULA, harbor activities in accordance with section 6.01 of the National Oceanic and Atmospheric Administration

Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). ULA's activities and impacts for 2008–2009 are expected to be within the scope of NMFS' 2005 EA and FONSI.

**Determinations**

NMFS has determined that the impact of harbor activities related to the Delta IV/EELV at VAFB (transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation) will result in the Level B Harassment of small numbers of Pacific harbor seals, California sea lions, and northern elephant seals. The effects of ULA's harbor activities are expected to be in the form of short-term and localized behavioral changes, and no take by injury or death is anticipated or authorized. NMFS has further determined that these takes will have a negligible impact on the affected marine mammal species and stocks.

While the number of incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the activity, the number of potential harassment takings is estimated to be small (less than five percent of any of the estimated population sizes) and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses is not implicated by this action.

Northern fur seals, Guadalupe fur seals, and Steller sea lions are unlikely to be found in the area and, therefore, will not be affected. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

**Authorization**

As a result of these determinations, NMFS has issued an IHA to ULA to take marine mammals, by Level B harassment, incidental to conducting harbor activities at VAFB for a one-year period, provided that the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 4, 2009.

**James H. Lecky,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–21961 Filed 9–10–09; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XR52**

### Marine Mammals; File No. 14534

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Ned Cyr, Director, NOAA Office of Science and Technology, Silver Spring, MD, has applied in due form for a permit to conduct research on marine mammals in the Pacific Ocean.

**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. 14534 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

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

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to NMFS.Pr1Comments@noaa.gov. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Tammy Adams or Carrie Hubard, (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).

The applicant requests a five-year permit to conduct a research program involving studies of sound production, diving and other behavior, and responses to sound of marine mammals, including endangered species. The results would be integrated with related studies and directly contribute to conservation management for sound producers and regulatory agencies by identifying characteristics of target species that are critical for passive monitoring, detection, and/or density estimation and by demonstrating how specific sounds, including simulated military sonar, may evoke behavioral responses in marine mammals. The experimental design involves temporarily attaching individual recording tags to measure vocalization, behavior, and physiological parameters as well as sound exposure. Behavior will be measured before, during, and after carefully controlled exposures of sound in conventional playback experiments. Tagged subjects will be exposed to received sound levels up to 180 dB re: 1μPa. This study will involve various activities that could take animals by harassment, including close approaches, attachment of tags, and sound exposure. Small fragments of sloughed skin, which often remain attached to retrieved tags, would be used for genetic analyses. Target species include beaked whales and other odontocetes, key baleen whales, and pinniped species for whom such data have not been previously obtained; other marine species may be incidentally impacted. Please refer to the tables in the application for the numbers of marine mammals, by species and stock, that are proposed for this permit. The research will be focused in the waters within the U.S. Navy's Southern California Range Complex, and primarily near the vicinity of San Clemente Island.

The applicant also submitted a draft environmental assessment (EA) prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit and conduct of the research. The draft EA is available for review and comment simultaneous with the scientific research permit application.

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

Dated: September 4, 2009.

**P. Michael Payne,**

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

[FR Doc. E9–21962 Filed 9–10–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XR55**

### Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** A public meeting of the Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) Groundfish Subcommittee will be held to review new rebuilding analyses for eight west coast groundfish species. This meeting is a work session which is open to the public.

**DATES:** The SSC Groundfish Subcommittee meeting to review new groundfish rebuilding analyses will be held beginning at 9 a.m., Wednesday, September 30, 2009 and will end at 5:30 p.m. or as necessary to complete business. The meeting will reconvene at 9 a.m., Thursday, October 1, 2009 and will end at 5:30 p.m. or as necessary to complete business.

**ADDRESSES:** The SSC Groundfish Subcommittee meeting will be held at the National Oceanic and Atmospheric Administration (NOAA) Western Regional Center's Sand Point Facility, Alaska Fisheries Science Center, Observer Training Room 1055, 7600 Sand Point Way N.E., Seattle, WA 98115–6349; telephone: (206) 526–4000.

*Council address*: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The purpose of the SSC Groundfish Subcommittee meeting is to review new draft rebuilding analyses for bocaccio, canary rockfish, cowcod, darkblotched rockfish, Pacific ocean perch, widow rockfish, yelloweye rockfish, and petrale sole and any other pertinent information, work with the Stock Assessment Teams to make necessary revisions, and ultimately produce an SSC report for use by the Council family and other interested persons. These new rebuilding analyses will be used to analyze 2011–12 harvest specifications for these species and to develop or modify rebuilding plans for these species.

No management actions will be decided at this SSC Groundfish Subcommittee meeting. The SSC Groundfish Subcommittees' role will be development of recommendations and reports for consideration by the SSC and the Council at its November meeting in Costa Mesa, CA.

Entry to the NOAA Western Regional Center's Sand Point Facility requires visitors to show a valid picture ID and register with security. A visitor's badge, which must be worn while at the NOAA Western Regional Center's Facility, will be issued to non-Federal employees participating in the meeting.

Although non-emergency issues not contained in the meeting agendas may come before the meeting participants for discussion, those issues may not be the subject of formal action during these meetings. SSC Groundfish Subcommittee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the meeting participants' intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 8, 2009.

**Tracey L. Thompson,**

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

[FR Doc. E9–21937 Filed 9–10–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XR57**

### Western Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings and hearings.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold a meeting of its Non-Commercial Fisheries Advisory Committee which may make recommendations on fishery management issues in the Western Pacific Region.

**DATES:** The Non-Commercial Fisheries Advisory Committee Meeting will be held on September 30, 2009. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The Non-Commercial Fisheries Advisory Committee will meet at the Council Office, 1164 Bishop St. Suite 1400, Honolulu, HI 96813, telephone: (808) 522–8220; and by teleconference (1–888–482–3560, Access Code: 5228220).

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

**SUPPLEMENTARY INFORMATION:** In addition to the agenda items listed here, the Non-Commercial Fisheries Advisory Committee may receive reports and make recommendations on emerging fishery issues in the Western Pacific Region. A public comment period will be provided in the agenda. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

#### Schedule and Agenda for Non-Commercial Fisheries Advisory Committee Meeting

*Wednesday, September 30, 2009, 1 p.m. - 5 p.m. (Hawaii Time)*

1. Introductions
2. Magnuson-Stevens Fishery Conservation and Management Act
3. Recreational Fishing and Management in the Western Pacific Region
   A. Recreational Data Task Force
   B. Marine Recreational Fisheries Statistical Survey
   C. Hawaii Marine Recreational Fishery Survey

D. Guam Voluntary Data Collection Program
4. Current Recreational Fishing Initiatives
A. Marine Recreational Information Program
B. National Saltwater Angler Registry
5. Council Actions
A. American Samoa Voluntary Logbook Data Collection Program
B. Recommendations on Mandatory Permitting and Reporting Requirements for Recreational Fisheries in the Western Pacific
6. Public Comments
7. Discussion and Action
8. Other Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: September 8, 2009.

**Tracey L. Thompson,**

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

[FR Doc. E9–21939 Filed 9–10–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XR56**

### North Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in October.

**DATES:** The Council will begin its plenary session at 8 a.m. on Saturday October 3 continuing through Friday October 9, 2009. The Council's Advisory Panel (AP) will begin at 8 a.m., Thursday October 1 and continue through Tuesday October 6. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Thursday October 1 and continue through Saturday October 3, 2009. All meetings are open to the public, except executive sessions.

**ADDRESSES:** The meetings will be held at the Anchorage Hilton Hotel, 500 W 3rd Avenue, Anchorage, AK

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** David Witherell, Council staff, telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports:
Election of Officers
Executive Director's Report
NMFS Management Report
Alaska Department of Fish & Game Report (including report on Board of Fish Proposals)
U.S. Coast Guard Report
U.S. Fish & Wildlife Service Report
Protected Species Report
2. Gulf of Alaska (GOA) Pacific Cod Allocation: Initial review GOA Pacific cod sector split.
3. GOA Rockfish Program: Discussion paper and action as necessary.
4. Observer Program: Receive report on electronic monitoring Exempted Fishing Permit (EFP) Phase two; review implementation analysis; receive Observer Advisory Committee report and action as necessary.
5. BSAI Crab Issues: BSAI Crab Regional Delivery Relief, identify preliminary preferred alternative; Initial Review of Crab Right of First Refusal provisions; Review proposals to address western Aleutian Island golden king crab fishery; Review outline for 5-year review of the program; Approve BSAI Crab Stock Assessment Fishery Evaluation (SAFE) and Over Fishing Limits (OFLs); receive discussion paper on Prohibited Species Catch (PSC) limits; Review status of Saint Matthew & Pribilof Blue King Crab and Opilio rebuilding plans.
6. Groundfish Actions: Final action on bottom trawl gear sweep requirements for flatfish trawl fishery; final action on management of BSAI skate complex; receive Plan Team report; approve proposed catch specifications
7. Permit Fees: Final action on permit fees.
8. Salmon Bycatch: Initial review of salmon bycatch data collection; receive Geiger/Pella report on salmon bycatch sampling. (SSC only/and NMFS salmon sampling protocol)
9. Groundfish Issues: Review progress on Annual Catch Limits (ACLs) requirements; Review discussion paper on GOA Tanner and Chinook bycatch; Approve 5-year Research Priorities; Habitat Area Particular Concern (HAPC) evaluation criteria (SSC only).
10. Halibut Issues: Three-year charter halibut logbook review.
11. Staff Tasking: Review Committees and tasking; review Rural Outreach Committee report; consider additional alternative for Amendment 93 per NMFS request.
12. Other Business

The SSC agenda will include the following issues:

1. Observer Program
2. Bering Sea Crab
3. Groundfish Actions
4. Salmon Bycatch
5. Groundfish Issues
6. Halibut Issues

The Advisory Panel will address most of the same agenda issues as the Council, except for #1 reports. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 8, 2009.

**Tracey L. Thompson,**

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

[FR Doc. E9–21938 Filed 9–10–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XR54**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Ad Hoc Salmon Amendment Committee (SAC) will hold a meeting to develop draft alternatives and plan analyses for an amendment to the Pacific Coast Salmon Fishery Management Plan (FMP) to address the Magnuson-Stevens Act (MSA) requirements for annual catch limits (ACL) and accountability measures (AM). This meeting of the SAC is open to the public.

**DATES:** The meeting will be held Wednesday, October 7, 2009, from 8:30 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Pacific Council Office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The reauthorized MSA established new requirements to end and prevent overfishing through the use of ACL and AM. Federal FMPs must establish mechanisms for ACL and AM by 2010 for stocks subject to overfishing and by 2011 for all others, with the exceptions of stocks managed under an international agreement or stocks with a life cycle of approximately one year.

On January 16, 2009, NMFS published amended guidelines for National Standard 1 (NS1) of the MSA to provide guidance on how to comply with new ACL and AM requirements. The NS1 Guidelines include recommendations for establishing several related reference points to ensure scientific and management uncertainty are accounted for when management measures are established.

The purpose of this meeting is to develop alternatives to address those issues, and to plan analyses that will be used to evaluate those alternatives in a National Environmental Policy Act (NEPA) analysis.

Although non-emergency issues not contained in the meeting agenda may come before the SAC for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 8, 2009.

**Tracey L. Thompson,**

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

[FR Doc. E9–21936 Filed 9–10–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XQ24**

### Endangered and Threatened Species; Recovery Plans

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

**ACTION:** Extension of public comment period.

**SUMMARY:** On July 23, 2009, we, NMFS, announced the release of the Draft Southern California Steelhead Recovery Plan (Plan) for public review and comment. The Plan addresses the Southern California Steelhead (*Oncorhynchus mykiss*) Distinct Population Segment (DPS), which spawns in watersheds from the Santa Maria River (just north of Point Conception) south to the Tijuana River at the U.S.-Mexico border. NMFS is soliciting review and comment from the public and all interested parties on the Draft Plan. As part of that proposal, we provided a 60–day comment period, ending on September 20, 2009. We have received requests for an extension of the public comment period. In response to these requests, we are extending the comment period for the proposed action an additional 60 days.

**DATES:** Information and comments on the subject action must be received by November 19, 2009.

**ADDRESSES:** Please send written comments and materials to Penny Ruvelas, National Marine Fisheries Service, 501 W. Ocean Blvd, Suite 4200, Long Beach, CA 90802. Comments may also be submitted by e-mail to: *SteelheadPlan.swr@noaa.gov*. Include in the subject line of the e-mail comment the following identifier: Comments on Southern California Steelhead Plan. Comments may be submitted via facsimile (fax) to 562–980–4027.

Persons wishing to review the Plan can obtain an electronic copy (i.e., CD-ROM) from Kimberly Speech by calling 562–980–4020 or by e-mailing a request to kimberly.speech@noaa.gov with the subject line ''CD-ROM Request for Southern California Steelhead Recovery Plan.'' Electronic copies of the Plan are also available on-line on the NMFS website *http://swr.nmfs.noaa.gov/recovery/So__Cal.htm*.

**FOR FURTHER INFORMATION CONTACT:** Mark Capelli, NMFS Southern California Steelhead Recovery Coordinator at 805–963–6478 x14 or Penny Ruvelas, NMFS SWR Protected Resources Division at 562–980–4197.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 23, 2009, we published a Notice of Availability for the Draft Southern California Steelhead Recovery Plan (Plan) for public review and comment (74 FR 36460). The Plan addresses the Southern California Steelhead (Oncorhynchus mykiss) Distinct Population Segment (DPS), which spawns in watersheds from the Santa Maria River (just north of Point Conception) south to the Tijuana River at the U.S.-Mexico border. NMFS is soliciting review and comment from the public and all interested parties on the Draft Plan. As part of that proposal, we provided a 60–day comment period, ending on September 20, 2009. We also held two public meetings on the Plan, one in Carlsbad, CA, on August 25, 2009 and one in Santa Barbara, CA, on September 1, 2009. We have received requests for an extension of the public comment period. In response to these requests, we are extending the comment period for the proposed action an additional 60 days. Information and comments must be received by November 19, 2009.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: September 4, 2009.

**Angela Somma,**

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

[FR Doc. E9–21963 Filed 9–10–09; 8:45 am]

**BILLING CODE 3510–22–S**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

**DATES:** *Comments Must Be Received on or Before:* October 12, 2009.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

*For Further Information or To Submit Comments Contact:* Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

## Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

## Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

## End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Product*

*NSN:* 3990–00–NSH–0076—Type E Pallet.

*NPA:* Goodwill Industries of South Texas, Inc., Corpus Christi, TX.

*Contracting Activity:* Dept. of the Army, XR W0MU USA DEP Corpus Christi, TX.

*Coverage:* C-list for 100% of the requirement for the Corpus Christi Army Depot.

*Services*

*Service Type/Location:* Custodial Services, USDA APHIS National Detector Dog Training Center, 360 Walt Sanders Memorial Drive, Newnan, GA.

*NPA:* WORKTEC, Jonesboro, GA.

*Contracting Activity:* USDA, Animal and Plant Health Inspection Service, Minneapolis, MN.

*Service Type/Location:* Switchboard Operation, James J Peters VA Medical Center, 130 West Kingsbridge Road, Bronx, NY.

*NPA:* Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY.

*Contracting Activity:* Department of Veterans Affairs, Bronx, NY.

## Deletions

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

## End of Certification

The following products are proposed for deletion from the Procurement List:

*Products*

*NSN:* 7530–00–989–0697—Card Set, Guide, File.

*NSN:* 7530–00–989–0683—Card Set, Guide, File.

*NPA:* Georgia Industries for the Blind, Bainbridge, GA.

*NSN:* 7520–00–NIB–1579—Tape Refill w/American Flag on the core.

*NPA:* The Lighthouse f/t Blind in New Orleans, New Orleans, LA.

*Contracting Activity:* GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

*NSN:* 6840–01–378–0447—Air Rite Odor Counteractant, Green.

*NSN:* 6840–01–378–0412—Air Rite Odor Counteractant, Green Apple Mint.

*NSN:* 6840–00–NIB–0029—Air Rite Odor Counteractant, Vanilla Bean.

*NSN:* 6840–00–NIB–0028—Air Rite Odor Counteractant, Citrus.

*NSN:* 6840–00–NIB–0027—Air Rite Odor Counteractant, Floral.

*NSN:* 6840–00–NIB–0026—Air Rite Odor Counteractant, Sweet Pine.

*NSN:* 6840–00–NIB–0025—Air Rite Odor Counteractant, Spice.

*NSN:* 6840–00–NIB–0023—Air Rite Odor Counteractant, Honeysuckle.

*NSN:* 6840–00–NIB–0022—Air Rite Odor Counteractant, Spearmint.

*NSN:* 6840–00–NIB–0021—Air Rite Odor Counteractant, Blue.

*NSN:* 6840–00–NIB–0019—Air Rite Odor Counteractant, Red.

*NSN:* 6840–00–NIB–0018—Air Rite Odor Counteractant, Silver.

*NSN:* 6840–00–NIB–0016—Air Rite Odor Counteractant, Gold.

*NPA:* Blind Industries & Services of Maryland, Baltimore, MD.

*Contracting Activity:* GSA/FAS Southwest Supply Center (QSDAC), Fort Worth, TX.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. E9–21917 Filed 9–10–09; 8:45 am]

BILLING CODE 6353–01–P

# COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

## Procurement List Addition

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to Procurement List.

**SUMMARY:** This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Effective Date:* October 12, 2009.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703)

603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:**

## Addition

On 6/19/2009 (74 FR 29187–29189), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

## Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. The action will result in authorizing small entities to furnish the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

## End of Certification

Accordingly, the following service is added to the Procurement List:

## Service

*Service Type/Locations:* Facility Operations & Maintenance: Directorate of Public Works, 5418 South Scott Plaza, Fort Dix, NJ; Barnes Building, 495 Summer Street, Boston, MA.

*NPA:* PRIDE Industries, Roseville, CA.

*Contracting Activity:* Dept of the Army, XR W6BA ACA Army Reserve CONT CTR, Fort Dix, NJ.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. E9–21918 Filed 9–10–09; 8:45 am]

**BILLING CODE 6353–01–P**

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# 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 10, 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 8, 2009.

**Angela C. Arrington,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

*Office of Planning, Evaluation and Policy Development*

*Type of Review:* Revision.

*Title:* Annual Mandatory Collection of Elementary and Secondary Education Data for EDFacts.

*Frequency:* Annually; Biennially.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 7,059.

*Burden Hours:* 884,834.

*Abstract:* EDFacts is in the implementation phase of a multiple year effort to consolidate the collection of education information about States, Districts, and Schools in a way that improves data quality and reduces paperwork burden for all of the national education partners. To minimize the burden on the data providers, EDEN seeks the transfer of the proposed data as soon as it has been processed for State, District, and School use. These data will then be stored in EDFacts and accessed by federal education program managers and analysts as needed to make program management decisions. This process will eliminate redundant data collections while providing for the timeliness of data submission and use. The modification of this collection is to directly address the Civil Rights Data Collection from local education agencies (LEAs), which is part of the larger annual submission of elementary and secondary education data under EDFacts. The current expiration data and all of the currently approved data requirements of the state submitted data are not changing at this time.

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 4127. 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. E9–21935 Filed 9–10–09; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice Inviting Applications From Test Publishers for a Determination of the Suitability of a Test for Use in the National Reporting System for Adult Education

**AGENCY:** Office of Vocational and Adult Education, U.S. Department of Education.

**ACTION:** Notice inviting applications from test publishers for a determination of the suitability of a test for use in the National Reporting System for Adult Education.

**SUMMARY:** The Department of Education (Department) announces the date by which test publishers must submit tests to the Secretary for review and approval for use in the National Reporting System for Adult Education (NRS).

**FOR FURTHER INFORMATION CONTACT:** Mike Dean, U.S. Department of Education, 400 Maryland Avenue, SW., Room 11152, Potomac Center Plaza, Washington, DC 20202–7240. *Telephone:* (202) 245–7828 or via *Internet: Mike.Dean@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

**SUPPLEMENTARY INFORMATION:** The Department's regulations in 34 CFR part 462 establish procedures for determining the suitability of tests for use in the NRS.

*Criteria and Requirements the Secretary uses:* In order for the Secretary to consider a test suitable for use in the NRS, the test must meet the criteria and requirements established in 34 CFR 462.13.

### Submission Requirements

a. A test publisher must comply with the requirements in 34 CFR 462.11 when submitting an application.

b. In accordance with § 462.10, the deadline for transmittal of applications is October 1, 2009.

c. You may submit your application by mail or hand delivery only. Whether you submit your application by mail (through the U.S. Postal Service or a commercial carrier) or you hand deliver (or use a courier service) your application, you must mail or deliver three copies of your application, on or before the deadline date, to the following address: NRS Assessment Review, c/o American Institutes for Research, 1000 Thomas Jefferson Street, NW., Washington, DC 20007.

d. If you submit your application by mail or commercial carrier, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

e. If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

f. If you submit your application by hand delivery, you (or a courier service) must deliver three copies of the application by hand, on or before 4:30:00 p.m., Washington, DC time on the application deadline date.

### Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 4, 2009.

**Dennis Berry,**

*Acting Assistant Secretary for Vocational and Adult Education.*

[FR Doc. E9–21841 Filed 9–10–09; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education Overview Information; Advanced Placement (AP) Test Fee Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.330B.

*Dates: Applications Available:* September 11, 2009.

*Deadline for Transmittal of Applications:* November 10, 2009.

*Deadline for Intergovernmental Review:* January 9, 2010.

### Full Text of Announcement

*I. Funding Opportunity Description*

*Purpose of Program:* The AP Test Fee program awards grants to eligible State educational agencies (SEAs) to enable them to pay all or a portion of advanced placement test fees on behalf of eligible low-income students who (1) are enrolled in an advanced placement course and (2) plan to take an advanced placement exam. The program is designed to increase the number of low-income students who take advanced placement tests and receive scores for which college academic credit is awarded.

**Program Authority:** 20 U.S.C. 6531–6537.

*Applicable Regulations:* The Education Department General Administration Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

*II. Award Information*

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* The Administration has requested $43,540,000 for the AP Test Fee and Advanced Placement Incentive (API) programs authorized under Title I, Part G of the Elementary and Secondary Education Act of 1965, as amended (ESEA), for FY 2010, of which we expect to use an estimated $15,374,000 for the AP Test Fee program. The remaining funds would support continuation grants under the API program. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

*Estimated Range of Awards:* $10,200—$4,378,000.

*Estimated Average Size of Awards:* $366,000.

*Estimated Number of Awards:* 42.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 12 months.

*III. Eligibility Information*

1. *Eligible Applicants:* SEAs in any State, including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and (subject to continued eligibility) the Republic of Palau.

**Note:** For the purposes of this program, the Bureau of Indian Education in the U.S. Department of the Interior is treated as an SEA.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Section 1706 of ESEA requires that grant funds provided under the AP Test Fee program supplement, and not supplant, other non-Federal funds that are available to assist low-income individuals in paying for the cost of advanced placement test fees.

3. *Other:* Current grantees under this program that expect to have sufficient carryover funds to cover school year 2009–2010 advanced placement exam fees for eligible low-income students should not apply for a new award under this program.

*IV. Application and Submission Information*

1. *Address to Request Application Package:* To obtain an application package via the Internet use the following address: *http://www.ed.gov/programs/apfee/applicant.html.*

To obtain an application package from the U.S. Department of Education use the following address: Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E224, Washington, DC 20202–6200. Telephone: (202) 260–1541 or by e-mail: *francisco.ramirez@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:* Applications Available: September 11, 2009.

*Deadline for Transmittal of Applications:* November 10, 2009.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

*Deadline for Intergovernmental Review:* January 9, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the AP Test Fee Program, CFDA Number 84.330B, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF

(Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of e-Application Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

*Address and mail or fax your statement to:* Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E224, Washington, DC 20202–6200. FAX: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.330B), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

*You must show proof of mailing consisting of one of the following:*

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

*If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:*

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.330B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## *V. Application Review Information*

The Department intends to fund, at some level, all applications that meet the minimum Requirements for Approval of Application as described in the application package for this program and that demonstrate need for new or additional funds to pay advanced placement exam fees on behalf of low-

income students for school year 2009–2010.

Also, in determining whether to approve an application for a new award (including the amount of the award) from an applicant with a current grant under this program, the Department will consider the amount of any carryover funds under the existing grant.

*VI. Award Administration Information*

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed five performance measures to evaluate the overall effectiveness of the AP Test Fee and API programs: (1) The number of advanced placement tests taken by low-income public school students nationally; (2) The number of advanced placement tests taken by minority (Hispanic, Black, Native American) public school students nationally; (3) The percentage of advanced placement tests passed (for AP exams, receiving scores of 3–5) by low-income public school students nationally; (4) The number of advanced placement tests passed (for AP exams, receiving scores of 3–5) by low-income public school students nationally; and (5) The cost per passage of an advanced placement test taken by a low-income public school student. The information provided by grantees in their final performance reports will be one of the sources of data for this measure. Other sources of data include the College Board and International Baccalaureate North America.

*VII. Agency Contact*

**FOR FURTHER INFORMATION CONTACT:** Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E224, Washington, DC 20202–6200. Telephone: (202) 260–1541 or by e-mail: *francisco.ramirez@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

*VIII. Other Information*

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 8, 2009.

**Thelma Meléndez de Santa Ana,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. E9–21950 Filed 9–10–09; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13509–000]**

### Little Susitna Construction Co., Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 3, 2009.

On August 31, 2009, Little Susitna Construction Company, Inc., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Turnagain Arm Tidal Electric Generation Project (Turnagain Arm Project or project), located on the Turnagain Arm of Cook Inlet and adjacent lands of the Kenai Peninsula Borough and the Municipality of Anchorage, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

*The proposed project would consist of the following:* (1) Proposed 8-mile-long and 7.5-mile-long tidal ''fences'' containing a total of 220, 10-megawatt (MW) Davis Turbine tidal-to-electrical energy generating units (total installed capacity equal to 2,200 MW)—the 8-mile-long tidal fence would extend from just south of Fire Island to Kenai Peninsula Borough land at Possession Point and the 7.5-mile-long tidal fence would extend from a point about 5–7 miles south of Fire Island to a point offshore of Anchorage; (2) two proposed control buildings—one near the southwest end of the 8-mile-long tidal fence at Possession Point (Possession Point control building) and one in Anchorage along Raspberry Road (Anchorage control building)—containing equipment for controlling the turbines and the interties of the transmission lines to existing area electrical grids; (3) a pair of proposed 44-mile-long, 230-kilovolt (kV) transmission lines extending southwest from the Possession Point control building to a Homer Electric substation near the unincorporated community of Nikiski; (4) a proposed single, 17-mile-long, 230-kV above and below water transmission line extending from the Possession Point control building, across the 8-mile-long tidal fence, and to the Anchorage control building; (5) a

pair of proposed 10-mile-long, 230-kV transmission lines extending from the Anchorage control building to a Chugach Electric substation in Anchorage; (6) a proposed 18-mile-long, 230-kV above and below water transmission line extending from the Possession Point control building, over the 7.5-mile-long tidal fence, and to the Anchorage control building; and (7) appurtenant facilities. The proposed project would have an estimated average annual generation of 11,560,000 megawatt-hours.

*Applicant Contact:* Dominic S.F. Lee, P.E., President and CEO, Little Susitna Construction Co., Inc., 821 N St., Suite 201, Anchorage, AK 99501; Ph. (907) 274–7571.

*FERC Contact:* Nick Jayjack, 202–502–6073.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at the *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13509) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–21869 Filed 9–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2611–071]**

### Madison Paper Industries, Hydro Kennebec LLC; Notice of Application for Transfer of License and Soliciting Comments and Motions To Intervene

September 3, 2009.

On September 1, 2009, Madison Paper Industries (transferor) and Hydro Kennebec LLC (transferee) filed an application for transfer of license of the Hydro Kennebec Project located in Kennebec and Somerset Counties, Maine, on the Kennebec River.

Applicants seek Commission approval to transfer the license for the Hydro Kennebec Project from the transferor to the transferee.

*Applicant Contact:* Transferor: Madison Paper Industries—Ms. Sarah A. Verville, Pierce Atwood LLP, One Monument Square, Portland, ME 04101, (207) 791–1100 e-mail: *sverville@pterceatwood.com.* Transferee: Hydro Kennebec LLC—Mr. Douglas W. Everette, Patton Boggs LLP, 2550 M Street, NW., Washington, DC 20037, phone (202) 457–5618, e-mail: *deverette@pattonboggs.com.*

*FERC Contact:* Patricia W. Gillis, (202) 502–8735.

Deadline for filing comments and motions to intervene: October 1, 2009. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii)(2008) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the eLibrary link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–2611–071) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–21871 Filed 9–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13566–000]**

### McGinnis, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 3, 2009.

On August 6, 2009, McGinnis, Inc. filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Melvin Price Hydrokinetic Project, to be located on the Mississippi River, in St. Claire County, Missouri and Madison County, Illinois.

The proposed Melvin Price Project would be located up to 12,000 feet downstream of the U.S. Army Corps of Engineers Melvin Price Lock and Dam. The proposed project would consist of: (1) Ten turbine generators, with a total installed capacity of 350 kilowatts, mounted to a single barge attached to the riverbed; (2) an armored submarine cable to transmit power generated to a metering station and transformer on shore adjacent to the barge; (3) a new approximately one- to two-mile-long, 13.2 kilovolt transmission line, which would extend from the new metering station to interconnect with the grid at either an existing hydropower facility substation located at Price Dam or a nearby existing Wood River Station; and (4) appurtenant facilities. The Melvin Price Hydrokinetic Project would have an estimated average annual generation of 1,533 megawatts-hours, which would be distributed to the power grid or sold directly to industrial, commercial, or municipal users.

*Applicant Contact:* Mr. Bruce McGinnis, Sr., McGinnis, Inc., P.O. Box 534, 502 Second St. Ext., South Point, Ohio 45680, (740) 377–4391, *bmcginnis@mcginnisinc.com.*

*FERC Contact:* John Ramer, (202) 502–8969.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13566) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–21870 Filed 9–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13474–000]**

### Hydrodynamics, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 3, 2009.

On May 22, 2009, Hydrodynamics, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Fresno Reservoir Hydroelectric Project, which would be located at the U.S. Bureau of Reclamation's (Reclamation) existing Fresno dam on the Milk River, in Hill County, Montana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

*The proposed project would consist of the following:* (1) A new 72-inch-diameter, 80-foot-long steel pipe bifurcating from the existing dam outlet works; (2) a new powerhouse containing two generating units with a combined installed capacity of 2.0 megawatts; (3) a new tailrace discharging flows into the Milk River; (4) a new substation; (5) a new 69-kilovolt, 2.6-mile-long transmission line; and (6) appurtenant facilities. The proposed project would have an average annual generation of 7.7 gigawatt-hours.

*Applicant Contact:* Ben Singer, Project Manager, Hydrodynamics, Inc., P.O. Box 1136, Bozeman, MT 59771; phone: (406) 587–5086.

*FERC Contact:* Dianne Rodman, (202) 502–6077.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*; call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13474) in the docket number field to access the document. For assistance, contact FERC Online Support.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–21868 Filed 9–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12555–004]**

### Mahoning Creek Hydroelectric Company, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

September 3, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12555–004.

c. *Date filed:* July 27, 2009.

d. *Applicant:* Mahoning Creek Hydroelectric Company, LLC.

e. *Name of Project:* Mahoning Creek Hydroelectric Project.

f. *Location:* On Mahoning Creek in Armstrong County, Pennsylvania. The proposed project would occupy Federal land managed by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Clifford Phillips, Vice President, Mahoning Creek Hydroelectric Company LLC, 150 North Miller Road, Suite 450 C, Fairlawn, OH 44333 (330) 869–8451.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. The deadline for filing motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. For a simpler method of submitting text-only comments, click on ''Quick Comment.''

k. This application has been accepted for filing and is ready for environmental analysis.

l. The proposed Mahoning Creek Project would be located at the U.S. Army Corps of Engineers' (Corps) Mahoning Creek dam and would consist of: (1) A new 50-foot-high intake structure attached to the upstream face

of the dam, equipped with removable trashracks, dewatering bulkhead panels, and a vertical slide gate; (2) a new lining on the existing (currently plugged), 108-inch-diameter conduit through dam monolith 15; (3) a new 1,090-foot-long, 120-inch-diameter penstock on the left (south) bank, bifurcating into two new 110-foot-long, 96-inch-diameter penstocks; (4) a new powerhouse located approximately 100 feet downstream of an existing stilling basin weir containing two new Kaplan turbine generator units with a total installed capacity of 6.0 MW; (5) a new 40-foot-wide, 150-foot-long, 10-foot-deep tailrace; (6) a new 2.2-mile-long, 25-kilovolt transmission line; (7) a new 100-foot-long bridge spanning a small stream to the entrance of a refurbished 0.5-mile-long access road; and (8) appurtenant facilities. The project would have an estimated annual generation of 20,000 megawatt-hours.

The project would operate using flows released by the Corps in accordance with the current dam operation as set by the Corps.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''PRELIMINARY TERMS AND CONDITIONS'', or ''PRELIMINARY FISHWAY PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural Schedule: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Notice of availability of the EA. | March 1, 2010. |
| Filing comments on EA ... | March 31, 2010. |
| Filing modified mandatory prescriptions or terms and conditions. | May 30, 2010. |

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in sections 5.22 and 5.23: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–21867 Filed 9–10–09; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 6901–059]**

### City of Martinsville, WV; Notice of Application for Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

September 3, 2009.

*Take notice that the following application has been filed with the Commission and is available for public inspection:*

a. *Application Type:* Surrender of License.

b. *Project No.:* 6901–059.

c. *Date Filed:* August 19, 2009.

d. *Applicant:* City of New Martinsville, West Virginia.

e. *Name of Project:* New Cumberland Hydroelectric Project.

f. *Location:* The unconstructed project was to be located at the U.S. Army Corps of Engineers' New Cumberland Locks and Dam on the Ohio River in Hancock County, West Virginia and Jefferson County, Ohio.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* City of New Martinsville, Attn: Lucille Blum, Mayor, 191 Main Street, New Martinsville, WV 26155; Telephone (304) 455–9120 and e-mail: *lblum@newmartinsville.com*.

i. *FERC Contact:* Diane M. Murray, Telephone (202) 502–8835 and e-mail: *diane.murray@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* October 5, 2009. Comments, motions to intervene, and protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*.

k. *Description of Request:* The licensee filed an application to surrender its license for the unconstructed New Cumberland Hydroelectric Project. The Licensee has not commenced construction of the project. No ground disturbing activities have occurred.

l. *Locations of the Application:* A copy of the application is available for

inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–21861 Filed 9–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP09–459–000]**

### Egan Hub Storage, LLC; Notice of Request Under Blanket Authorization

September 3, 2009.

Take notice that on August 31, 2009, Egan Hub Storage, LLC (Egan Hub), filed in Docket No. CP09–459–000, a prior notice request pursuant to Sections 157.205, 157.208, 157.211, 157.212 and 157.213 of the Commission's regulations under the Natural Gas Act (NGA), for authorization to construct and operate facilities to connect the Egan Hub system to Kinder Morgan Louisiana Pipeline LLC (KMLP) in Acadia Parish, Louisiana in order to receive and deliver natural gas from and to KMLP, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Egan Hub proposes to perform these activities under its blanket certificate issued October 7, 1996, in Docket No. CP96–199–000 [77 FERC ¶ 61,016 (1996)].

The filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, Egan Hub seeks authorization to construct, own, operate, and maintain a new pipeline tap on its Fourth Cavern Line 85, and associated connecting piping to the edge of the right-of-way, to receive and deliver natural gas at an interconnection with KMLP's interstate pipeline facilities, at a site selected by KMLP. Additionally, Egan Hub will own, operate and maintain a check electronic gas measurement (EGM) facility that KMLP will install at its meter and regulator (M&R) site. KMLP's facilities are designed primarily to receive revaporized liquefied natural gas (LNG) from the Sabine Pass LNG, L.P. LNG import terminal to be located in Cameron Parish, Louisiana.

Egan Hub also proposes the design and construction of approximately 15 feet of 16-inch diameter pipe, a single 24-inch by 24-inch by 16-inch tee tap and a 16-inch valve. The check EGM, to be constructed by KMLP within its M&R site, is to be owned and operated by Egan Hub. The project area is located within the corridor of Egan Hub's Fourth Cavern Project Line 85 at approximately milepost 6.9 in Acadia Parish, Louisiana. With the exception of the check EGM, the project area is entirely within the proposed workspace previously surveyed and approved for Egan Hub's Fourth Cavern Project. Egan Hub has estimated the total cost of constructing the facilities proposed herein to be $400,000. Egan Hub will bear all costs associated with constructing such facilities. The proposed in-service date for the interconnect facilities is March 1, 2010.

Any questions regarding this application may be directed to Lisa A. Moore, General manager, Rates and Certificates, Egan Hub Storage, LLC, P. O. Box 1642, Houston, Texas 77251–1642; phone (713)627–4102, FAX (713)627–5947.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. 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.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–21866 Filed 9–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings No. 2

September 1, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP07–666–003.
*Applicants:* Colorado Interstate Gas Company.
*Description:* Colorado Interstate Gas Company submits Fifth-Fifth Revised Sheet No 11A *et al.* to FERC Gas Tariff, First Revised Volume No 1.
*Filed Date:* 08/28/2009.
*Accession Number:* 20090831–0021.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 09, 2009.

*Docket Numbers:* RP06–200–061.
*Applicants:* Rockies Express Pipeline LLC.
*Description:* Rockies Express Pipeline LLC submits Seventh Revised Sheet No. 8D *et al.* to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 9/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0047.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP96–272–096.
*Applicants:* Northern Natural Gas Company.
*Description:* Northern Natural Gas Company submits Third Revised Sheet No. 66B 01b *et al.* to its FERC Gas Tariff, Fifth Revised Volume No 1.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0048.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP96–359–043.
*Applicants:* Transcontinental Gas Pipe Line Company, LLC.
*Description:* Transcontinental Gas Pipe Line Company, LLC submits Second Revised Sheet No. 29 *et al.* to its FERC Gas Tariff, Fourth Revised Volume No 1.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0049.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

**Kimberly D. Bose,**
*Secretary.*
[FR Doc. E9–21863 Filed 9–10–09; 8:45 am]
**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings No. 2

September 2, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers* RP99–301–241.
*Applicants:* ANR Pipeline Company.
*Description:* ANR Pipeline Company submits Rate Schedule FTS–1 negotiated rate service agreement between ANR and Madison Gas & Electric Company.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090901–0033.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers* RP99–301–242.
*Applicants:* ANR Pipeline Company.
*Description:* ANR Pipeline Company submits Rate Schedule FTS–1 service agreement with Nexen Marketing USA Inc, to be effective 11/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090901–0034.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers* RP99–301–243.
*Applicants:* ANR Pipeline Company.
*Description:* ANR Pipeline Company submits two amendments, fourth and fifth to Rate Schedule ETS rate agreement between ANR and Wisconsin Electric Power Company.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090901–0035.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

**Kimberly D. Bose,**
*Secretary.*
[FR Doc. E9–21865 Filed 9–10–09; 8:45 am]
**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings No. 1

September 2, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP09–998–000.
*Applicants:* Tennessee Gas Pipeline Company.
*Description:* Tennessee Gas Pipeline Company submits First Revised Sheet 29B *et al.* to its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090901–0036.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–999–000.
*Applicants:* Southern Natural Gas Company.
*Description:* Southern Natural Gas Company submits Seventy-Second Revised Sheet 14 *et al.* to its FERC Gas Tariff, Seventh Revised Volume 1, to be effective 10/1/09.

*Filed Date:* 08/31/2009.
*Accession Number:* 20090901–0037.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–1000–000.
*Applicants:* Tennessee Gas Pipeline Company.
*Description:* Tennessee Gas Pipeline Company submits Thirty-Eighth Revised Sheet 20 *et al.* to its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090901–0038.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–1001–000.
*Applicants:* Colorado Interstate Gas Company.
*Description:* Colorado Interstate Gas Company submits Fifty-Sixth Revised Sheet 11A to its FERC Gas Tariff, First Revised Volume 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090901–0039.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–1002–000.
*Applicants:* Energy West Development, Inc.
*Description:* Energy West Development, Inc submits Fourth Revised Sheet 3 *et al.* to its FERC Gas Tariff, Volume 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090901–0040.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–1003–000.
*Applicants:* Wyoming Interstate Company, Ltd.
*Description:* Wyoming Interstate Company, Ltd submits Thirteenth Revised Sheet 1 *et al.* to FERC Gas Tariff, Second Revised Volume 2, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090901–0041.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–1004–000.
*Applicants:* El Paso Natural Gas Company.
*Description:* EL Paso Gas Company submits Fourth Revised Sheet 200A *et al.* to its FERC Gas Tariff, Second Revised Volume 1A, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090901–0042.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–1005–000.
*Applicants:* Southern LNG Inc.
*Description:* Southern LNG, Inc submits Twenty-Fourth Revised Sheet 5 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090901–0043.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–1006–000.
*Applicants:* WestGas InterState, Inc.
*Description:* WestGas InterState, Inc submits Eleventh Revised Sheet 5 to its FERC Gas Tariff, First Revised Volume 1, to effective 10/1/09.
*Filed Date:* 09/01/2009.
*Accession Number:* 20090901–0065.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–1007–000.
*Applicants:* Transwestern Pipeline Company, LLC.
*Description:* Transwestern Pipeline Company submits Seventh Revised Sheet 5 *et al.* of its FERC Gas Tariff, Third Volume 1, to be effective 10/1/09.
*Filed Date:* 09/01/2009.
*Accession Number:* 20090901–0064.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–1008–000.
*Applicants:* Gulf Crossing Pipeline Company LLC.
*Description:* Gulf Crossing Pipeline Company, LLC submits Original Sheet 1307A to its FERC Gas Tariff, Original Volume 1, to be effective 9/12/09.
*Filed Date:* 09/01/2009.
*Accession Number:* 20090901–0063.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–1009–000.
*Applicants:* Texas Gas Transmission, LLC.
*Description:* Texas Gas Transmission, LLC submits Original Sheet 3799A to its FERC Gas Tariff, Third Revised Volume 1, to be effective 10/1/09.
*Filed Date:* 09/01/2009.
*Accession Number:* 20090901–0062.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–1010–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Gulf South Pipeline Company, LP submits Original Sheet No. 4022 *et al.* to FERC Gas Tariff, Sixth Revised Volume No. 1.
*Filed Date:* 09/01/2009.
*Accession Number:* 20090901–0061.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–1011–000.
*Applicants:* Hardy Storage Company LLC.
*Description:* Hardy Storage Company, LLC submits a Petition for Approval of Settlement and Explanatory Statement.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090901–0066.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–21864 Filed 9–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings No. 1

September 1, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP09–956–000.
*Applicants:* Dominion Cove Point LNG, LP.
*Description:* Dominion Cove Point LNG, LP submits Sheet No. 0 to its FERC Gas Tariff, Original Volume No. 1, to be effective 9/27/09.
*Filed Date:* 08/28/2009.
*Accession Number:* 20090831–0065.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 9, 2009.

*Docket Numbers:* RP09–957–000.
*Applicants:* Dominion Transmission, Inc.
*Description:* Dominion Transmission, Inc. submits Thirty-Eighth Revised Sheet 31 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 10/1/09.
*Filed Date:* 08/28/2009.
*Accession Number:* 20090831–0064.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 9, 2009.

*Docket Numbers:* RP09–959–000.
*Applicants:* Dominion South Pipeline Company, LP.
*Description:* Dominion South Pipeline Company, LP submits Fourth Revised Sheet No. 50 *et al.* to FERC Gas Tariff, Original Volume No. 1, to be effective 10/1/09.
*Filed Date:* 08/28/2009.
*Accession Number:* 20090831–0063.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 9, 2009.

*Docket Numbers:* RP09–960–000.
*Applicants:* Dominion Cove Point LNG, LP.
*Description:* Dominion Cove Point LNG, LP submits Tenth Revised Sheet 5 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 10/1/09.
*Filed Date:* 08/28/2009.
*Accession Number:* 20090831–0062.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 9, 2009.

*Docket Numbers:* RP09–961–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Gulf South Pipeline Company, LP submits Sixteenth Revised Sheet 20 *et al.* to its FERC Gas Tariff, Sixth Revised Volume 1 to be effective 10/1/09.
*Filed Date:* 08/28/2009.
*Accession Number:* 20090831–0061.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 9, 2009.

*Docket Numbers:* RP09–962–000.
*Applicants:* Texas Gas Transmission, LLC.
*Description:* Texas Gas Transmission, LLC submits Second Revised Sheet 22 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 10/1/09.
*Filed Date:* 08/28/2009.
*Accession Number:* 20090831–0060.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 9, 2009.

*Docket Numbers:* RP09–963–000.
*Applicants:* Northwest Pipeline GP.
*Description:* Northwest Pipeline GP submits Fifth Revised Sheet No. 14 to FERC Gas Tariff, Fourth Revised Volume No. 1.
*Filed Date:* 08/28/2009.
*Accession Number:* 20090831–0024.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 9, 2009.

*Docket Numbers:* RP09–964–000.
*Applicants:* Equitrans, L.P.
*Description:* Equitrans, LP submits base transportation agreement and the no conforming Exhibit AB transaction.
*Filed Date:* 08/28/2009.
*Accession Number:* 20090831–0023.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 9, 2009.

*Docket Numbers:* RP09–966–000.
*Applicants:* Dominion Transmission, Inc.
*Description:* Dominion Transmission, Inc. submits First Revised Sheet No. 1301 *et al.* FERC Gas Tariff, Third Revised Volume No. 1.
*Filed Date:* 08/28/2009.
*Accession Number:* 20090831–0022.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 9, 2009.

*Docket Numbers:* RP09–958–000.
*Applicants:* Colorado Interstate Gas Company.
*Description:* Colorado Interstate Gas Company Penalties Assessed Compliance Filing.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–5015.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–965–000.
*Applicants:* Alliance Pipeline L.P.
*Description:* Alliance Pipeline LP submits Seventh Revised Sheet No. 10 to FERC Gas Tariff, Original No. 1.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0020.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–967–000.
*Applicants:* National Fuel Gas Supply Corporation.
*Description:* National Fuel Gas Supply Corporation submits Thirty-Fourth Revised Sheet No. 8 *et al.* to its FERC Gas Tariff, Fourth Revised Volume No. 1.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0019.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–968–000.
*Applicants:* Florida Gas Transmission Company, LLC.
*Description:* Florida Gas Transmission Company, LLC submits Eighteenth Revised Sheet No. 7 *et al.* to FERC Gas Tariff, Fourth Revised Volume No. 1.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0042.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–969–000.
*Applicants:* WTG Hugoton, LP.
*Description:* WTG Hugoton, LP submits First Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0055.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–970–000.
*Applicants:* Transcontinental Gas Pipe Line Company, LLC.
*Description:* Transcontinental Gas Pipe Line Company, LLC submits Third Revised Sheet No. 22 *et al.* to its FERC Gas Tariff, Fourth Revised Volume No. 1.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0056.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–971–000.
*Applicants:* Transcontinental Gas Pipe Line Company, LLC.
*Description:* Transcontinental Gas Pipe Line Company, LLC submits Fourth Revised Sheet No. 21 *et al.* to its FERC Gas Tariff, Fourth Revised Volume No. 1.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0054.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–972–000.
*Applicants:* Sea Robin Pipeline Company, LLC.
*Description:* Sea Robin Pipeline Company, LLC submits Seventh Revised Sheet No. 5 *et al.* to its FERC Gas Tariff, Second Revised Volume No. 1.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0053.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–973–000.
*Applicants:* Trunkline LNG Company, LLC.
*Description:* Trunkline LNG Company, LLC submits Eighteenth Revised Sheet No 5 to its FERC Gas Tariff, Second Revised Volume No 1–A.

*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0052.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–974–000.
*Applicants:* Southwest Gas Storage Company.
*Description:* Southwest Gas Storage Company submits Twenty-Seventh Revised Sheet No 5 to its FERC Gas Tariff, First Revised Volume No 1.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0051.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–975–000.
*Applicants:* Dauphin Island Gathering Partners.
*Description:* Dauphin Island Gathering Partners submits Eighth Revised Sheet No 7 to its FERC Gas Tariff, First Revised Volume No 1.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0050.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–976–000.
*Applicants:* Great Lakes Gas Transmission Limited Par.
*Description:* Great Lakes Gas Transmission Limited Partnership submits a Notice of Proposed Changes to FERC Gas Tariff Annual Charges Adjustment.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0043.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–977–000.
*Applicants:* West Texas Gas, Inc.
*Description:* West Texas Gas, Inc submits Twenty-Seventh Revised Sheet No 4 to FERC Gas Tariff, First Revised Volume No 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0044.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–978–000.
*Applicants:* Florida Gas Transmission Company, LLC.
*Description:* Florida Gas Transmission Company, LLC submits Seventeenth Revised Sheet No. 7 *et al.* to FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0045.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–979–000.
*Applicants:* Western Gas Interstate Company.
*Description:* Western Gas Interstate Company submits Fourth Revised Sheet No 10 to its FERC Gas Tariff, Fourth Revised Volume No 1.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0046.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–980–000.
*Applicants:* Enbridge Pipelines (Midla) L.L.C.
*Description:* Enbridge Pipelines (Midla) L.L.C. submits Third Revised Sheet 0 *et al.* to FERC Gas Tariff, Fifth Revised Volume 1 to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0066.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–981–000.
*Applicants:* Mississippi Canyon Gas Pipeline, LLC.
*Description:* Mississippi Canyon Gas Pipeline, LLC submits Ninth Revised Sheet No 5 to FERC Gas Tariff, First Revised Volume No 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0082.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–982–000.
*Applicants:* Nautilus Pipeline Company, L.L.C.
*Description:* Nautilus Pipeline Company, LLC submits Eleventh Revised Sheet No 9 to FERC Gas Tariff, Original Volume No 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0081.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–983–000.
*Applicants:* Enbridge Pipelines (AlaTenn) L.L.C.
*Description:* Enbridge Pipelines (AlaTenn) LLC submits Sixth Revised Sheet No 4 to FERC Gas Tariff, Fourth Revised Volume No 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0080.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–984–000.
*Applicants:* Garden Banks Gas Pipeline, LLC.
*Description:* Garden Banks Gas Pipeline, LLC submits Tenth Revised Sheet No 6 to FERC Gas Tariff, Original Volume No 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009
*Accession Number:* 20090831–0079.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–985–000.
*Applicants:* Texas Eastern Transmission LP.
*Description:* Texas Eastern Transmission, LP submits Third Revised Sheet No. 591 to FERC Gas Tariff, Seventh Revised Volume No. 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0078.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–986–000.
*Applicants:* Saltville Gas Storage Company L.L.C.
*Description:* Saltville Gas Storage Company, LLC submits Fourth Revised Sheet No 154 to FERC Gas Tariff, Original Volume No 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0077.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–987–000.
*Applicants:* Sabine Pipe Line LLC.
*Description:* Sabine Pipe Line LLC submits Thirteenth Revised Sheet No. 20 to its FERC Gas Tariff, Original Volume No 1.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0070.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–988–000.
*Applicants:* Paiute Pipeline Company.
*Description:* Paiute Pipeline Company submit Twentieth Revised Sheet No 10 to its FERC Gas Tariff, Second Revised Volume No 1–A.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0071.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–989–000.
*Applicants:* Williston Basin Interstate Pipeline Co.
*Description:* Williston Basin Interstate Pipeline Company submits Seventy-Second Revised Sheet No. 15 *et al.* to FERC Gas Tariff, Second Revised Volume No 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0072.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–990–000.
*Applicants:* Panhandle Eastern Pipe Line Company, LP.
*Description:* Panhandle Eastern Pipe Line Company, LP submits Twenty-Fourth Revised Sheet No. 4 *et al.* to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 10/1/09.
*Filed Date:* 08/31/2009.
*Accession Number:* 20090831–0073.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–991–000.
*Applicants:* Chandeleur Pipe Line Company.
*Description:* Chandeleur Pipe Line Company submits Twenty-Sixth

Revised Sheet No. 5 to its FERC Gas Tariff, Second Revised Volume No. 1.

*Filed Date:* 08/31/2009.

*Accession Number:* 20090831–0074.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–992–000.

*Applicants:* Trunkline Gas Company, LLC.

*Description:* Trunkline Gas Company, LLC submits Twenty-First Revised Sheet No. 10 *et al.* to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 10/1/09.

*Filed Date:* 08/31/2009.

*Accession Number:* 20090831–0075.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–993–000.

*Applicants:* OkTex Pipeline Company.

*Description:* OkTex Pipeline Company submits Seventh Revised Sheet No. 17 *et al.* to FERC Gas Tariff, Original Volume No. 1, to be effective 10/1/09.

*Filed Date:* 08/31/2009.

*Accession Number:* 20090831–0076.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–994–000.

*Applicants:* Williston Basin Interstate Pipeline Co.

*Description:* Williston Basin Interstate Pipeline Co submits Seventy-Third Revised Sheet No. 15 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1.

*Filed Date:* 08/31/2009

*Accession Number:* 20090831–0090.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–995–000.

*Applicants:* Sea Robin Pipeline Company, LLC.

*Description:* Sea Robin Pipeline Co., LLC submits Second Revised Sheet No. 2 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1.

*Filed Date:* 08/31/2009.

*Accession Number:* 20090831–0093.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–996–000.

*Applicants:* Puget Sound Energy, Inc.

*Description:* Puget Sound Energy, Inc. submits Ninth Revised Sheet No. 1 *et al.* to FERC Gas Tariff, Original Volume No. 1 re Jackson Prairie Storage Project.

*Filed Date:* 08/31/2009.

*Accession Number:* 20090831–0092.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* RP09–997–000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* Gulf South Pipeline Co., LP submits its annual cash-in/cash-out report.

*Filed Date:* 08/31/2009.

*Accession Number:* 20090831–0091.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–21862 Filed 9–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings No. 1

August 25, 2009.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC09–105–000.

*Applicants:* MxEnergy Electric Inc.

*Description:* MXenergy Electric Inc. Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action.

*Filed Date:* 08/20/2009.

*Accession Number:* 20090820–5082.

*Comment Date:* 5 p.m. Eastern Time on Monday, August 31, 2009.

*Docket Numbers:* EC09–106–000.

*Applicants:* Milford Wind Corridor Phase I, LLC, MWCI Holdings, LLC.

*Description:* Application for Authorization of Disposition of Jurisdictional Facilities and Request for Expedited Consideration and Confidential Treatment of Milford Wind Corridor Phase I, LLC, and MWCI Holdings, LLC.

*Filed Date:* 08/25/2009.

*Accession Number:* 20090825–5046.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 15, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG09–89–000.

*Applicants:* Silver Sage Windpower, LLC.

*Description:* Notice of Self-Certification as an Exempt Wholesale Generator of Silver Sage Windpower, LLC.

*Filed Date:* 08/25/2009.

*Accession Number:* 20090825–5039.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 15, 2009.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER07–589–003; ER05–1389–003; ER06–1228–004; ER99–3450–009; ER99–2769–010; ER00–2706–007; ER01–390–007; ER04–208–006.

*Applicants:* Citigroup Energy Canada ULC, San Juan Mesa Wind Project, LLC, Chandler Wind Partners, LLC, Foote Creek II, LLC, Foote Creek IV, LLC, Ridge Crest Wind Partners, LLC, Citigroup Energy Inc., Phibro LLC, Foote Creek III, LLC.

*Description:* Notice of Non-Material Change in Status.

*Filed Date:* 08/24/2009.

*Accession Number:* 20090824–5128.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* ER09–863–002.
*Applicants:* SMART Papers Holdings, LLC.
*Description:* SMART Papers Holdings, LLC's Substitute Original Sheet 1 to its FERC Electric Tariff, Original Volume 1.
*Filed Date:* 08/24/2009.
*Accession Number:* 20090825–0057.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* ER09–1306–001.
*Applicants:* Kansas City Power & Light Company.
*Description:* Kansas City Power & Light Company submits the amended and Restated Interconnection Rights Assignment and Assumption Agreement *et al.*
*Filed Date:* 08/24/2009.
*Accession Number:* 20090825–0054.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* ER09–1548–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc submits Notice of Succession of Certain Transmission Service Agreements and Network Integration Transmission Service and Operating Agreements.
*Filed Date:* 08/24/2009.
*Accession Number:* 20090825–0056.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* ER09–1544–000.
*Applicants:* PacifiCorp.
*Description:* PacifiCorp submits Average System Cost filing for sales of electric power to the Bonneville Power Administration.
*Filed Date:* 08/04/2009.
*Accession Number:* 20090805–0021.
*Comment Date:* 5 p.m. Eastern Time on Friday, September 04, 2009.

*Docket Numbers:* ER09–1620–000.
*Applicants:* Virginia Electric and Power Company.
*Description:* Virginia Electric and Power Company submits revised cover sheet to cancel a Standard Large Generator Interconnection Agreement between Dominion Virginia Power and CPV Warren, LLC.
*Filed Date:* 08/24/2009.
*Accession Number:* 20090825–0018.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

*Docket Numbers:* ER09–1621–000.
*Applicants:* Jersey Central Power & Light Co.
*Description:* Jersey Central Power & Light Co submits an amended Interconnection Agreement with RR Energy Mid-Atlantic Power Holdings, LLC.
*Filed Date:* 08/24/2009.
*Accession Number:* 20090825–0058.
*Comment Date:* 5 p.m. Eastern Time on Monday, September 14, 2009.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES09–48–000.
*Applicants:* El Paso Electric Company.
*Description:* Application of El Paso Electric Company for Authorization under Section 204 of the Federal Power Act regarding a Revolving Credit Facility.
*Filed Date:* 08/25/2009.
*Accession Number:* 20090825–5040.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 15, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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**Nathaniel J. Davis, Sr.,**
*Deputy Secretary.*
[FR Doc. E9–21875 Filed 9–10–09; 8:45 am]
**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings No. 1

September 3, 2009.

*Take notice that the Commission received the following exempt wholesale generator filings:*

*Docket Numbers:* EG09–91–000.
*Applicants:* Big Sky Wind, LLC.
*Description:* Self Certification Notice of Big Sky Wind, LLC.
*Filed Date:* 09/03/2009.
*Accession Number:* 20090903–5102.
*Comment Date:* 5 p.m. Eastern Time on Thursday, September 24, 2009.

*Take notice that the Commission received the following electric rate filings:*

*Docket Numbers:* ER04–230–044; ER01–1385–038; ER01–3155–029; EL01–45–037.
*Applicants:* Consolidated Edison Company of New York; New York Independent System Operator, Inc.
*Description:* NYISO filing of its 18th quarterly report re: efficient utilization of combined cycle units and efforts to accommodate batch loads and flywheel energy storage technologies in its ancillary services markets.
*Filed Date:* 05/28/2009.
*Accession Number:* 20090528–5020.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 22, 2009.

*Docket Numbers:* ER09–412–006.
*Applicants:* PJM Interconnection L.L.C.
*Description:* PJM Interconnection L.L.C. submits substitute revisions to the PJM Open Access Transmission Tariff, FERC Electric Tariff Sixth Revised Volume No. 1, effective 11/1/09.
*Filed Date:* 09/01/2009.
*Accession Number:* 20090902–0126.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 22, 2009.

*Docket Numbers:* ER09–1522–001.
*Applicants:* Torofino Trading LLC.
*Description:* Torofino Trading LLC submits amended petition for

acceptance of initial tariff, waivers and blanket authority FERC Electric Tariff, Original Volume 1.

*Filed Date:* 09/02/2009.

*Accession Number:* 20090902–0125.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 23, 2009.

*Docket Numbers:* ER09–1645–000.

*Applicants:* Devonshire Energy LLC.

*Description:* Devonshire Energy LLC submits an application for authorization to make wholesale sales of energy, capacity and ancillary services at negotiated, market-based rates.

*Filed Date:* 09/01/2009.

*Accession Number:* 20090902–0152.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 22, 2009.

*Docket Numbers:* ER09–1656–000.

*Applicants:* Ashtabula Wind II, LLC.

*Description:* Ashtabula Wind II, LLC submits authorization to make market-based sales of energy capacity and certain ancillary services under a market-based rate tariff.

*Filed Date:* 09/01/2009.

*Accession Number:* 20090902–0153.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 22, 2009.

*Docket Numbers:* ER09–1668–000.

*Applicants:* MidAmerican Energy Company.

*Description:* MidAmerican Energy Company submits notice of cancellation of Transmission Service Agreement with Corn Belt Power Cooperative *etc.*

*Filed Date:* 09/01/2009.

*Accession Number:* 20090902–0127.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 22, 2009.

*Docket Numbers:* ER09–1669–000; ER09–1670–000.

*Applicants:* Kansas City Power & Light Company, enXco Development Corporation.

*Description:* Kansas City Power & Light Company *et al.* submits an executed Spearville Interconnection Facilities Joint Ownership Agreement with enXco Development Corp.

*Filed Date:* 09/01/2009.

*Accession Number:* 20090902–0128.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 22, 2009.

*Docket Numbers:* ER09–1671–000.

*Applicants:* Xcel Energy Services, Inc.

*Description:* Xcel Energy Services, Inc. submits notice of termination of various service agreements under Public Service Company of Colorado FERC Electric Tariff, First Revised Volume 6 *etc.*

*Filed Date:* 09/01/2009.

*Accession Number:* 20090902–0129.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 22, 2009.

*Docket Numbers:* ER09–1672–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Pacific Gas and Electric Companys submits notice of termination of PG&E's Rate Schedule FERC No. 178 *et al.*

*Filed Date:* 09/01/2009.

*Accession Number:* 20090902–0130.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 22, 2009.

*Docket Numbers:* ER09–1673–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection L.L.C. submits revisions to the PJM Open Access Transmission Tariff and Reliability Assurance Agreement.

*Filed Date:* 09/01/2009.

*Accession Number:* 20090902–0131.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 22, 2009.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES08–46–001.

*Applicants:* Consumers Energy Company.

*Description:* Amendment of Original Application and Request for Waiver of Competitive Bid/Negotiated Placement Requirements of Consumers Energy Company.

*Filed Date:* 09/03/2009.

*Accession Number:* 20090903–5036.

*Comment Date:* 5 p.m. Eastern Time on Thursday, September 24, 2009.

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**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–21872 Filed 9–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2005–0019; FRL–8955–8]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Renewal of the Information Collection Request for Contaminant Occurrence Data in Support of EPA's Third Six-Year Review of National Primary Drinking Water Regulations; EPA ICR No. 2231.02, OMB Control No. 2040–01

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on February 28, 2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before November 10, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–

OW–2005–0019 by one of the following methods:

• *www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *Mail:* Water Docket, Environmental Protection Agency, *Mailcode:* 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center Public Reading Room, EPA Headquarters West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OW–2005–0019. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. Please contact EPA prior to submitting CBI. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:** Shari Bauman, Office of Ground Water and Drinking Water, Standards and Risk Management Division, Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (MC 4607M), Washington, DC 20460; telephone number: (202) 564–0293.

**SUPPLEMENTARY INFORMATION:**

## How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2005–0019, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the EPA Docket Center is 202–566–2426.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

## What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## What Information Collection Activity or ICR Does This Apply to?

*Affected entities:* Entities potentially affected by this action are the 56 primacy agencies (i.e., States and territories) subject to federal drinking water regulations.

*Title:* Agency Information Collection Activities; Proposed Collection; Comment Request; Renewal of the Information Collection Request for Contaminant Occurrence Data in Support of EPA's Third Six-Year Review of National Primary Drinking Water Regulations

*ICR numbers:* EPA ICR No. 2231.02, OMB Control No. 2040–01.

*ICR status:* This current ICR is scheduled to expire on February 21, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The Safe Drinking Water Act (SDWA), as amended in 1996, requires that the U.S. Environmental Protection Agency (EPA) review existing National Primary Drinking Water Regulations (NPDWRs) no less often than every six

years. This cyclical evaluation is referred to as the ''Six-Year Review of National Primary Drinking Water Regulations'' or simply, the ''Six-Year Review''. Through the Six-Year Review process, the EPA reviews and assesses risks to human health posed by regulated drinking water contaminants.

EPA completed and published review results for the first Six-Year Review cycle (1996–2002) on July 18, 2003 (68 FR 42908). The occurrence assessments conducted for the first Six-Year Review were based on compliance monitoring data from 1993 to 1997, which were provided by States.

EPA expects to complete and publish the review results for the second Six-Year Review cycle (2003–2009) in the near future. The occurrence assessments conducted for the second Six-Year Review are based on data collected between 1998 and 2005 and voluntarily submitted by States and other primacy agencies under the current Information Collection Request (ICR No. 2231.01, 71 FR 32340).

EPA's Office of Water is renewing the current ICR and requesting that States and other primacy agencies voluntarily provide historical compliance monitoring (contaminant occurrence) data for community water systems (CWSs) and non-transient non-community water systems (NTNCWSs) to the Agency. The Agency is requesting contaminant occurrence data and treatment technique data collected from 2006 to 2012 for all regulated chemical, radiological and microbial contaminants to support the Agency's future Six-Year Reviews. This collection request is the same as the current ICR (ICR No. 2231.01, 71 FR 32340) regarding data type and duration (i.e., same number of years). However, the Agency will be increasing the scope to request data collected for several additional rules (*e.g.*, the Surface Water Treatment Rules, the Disinfectants and Disinfection By Product Rules, the Ground Water Rule) that are not reflected in the current ICR.

The compliance monitoring records in this information collection (including all results for analytical detections and non-detections) provide the data needed to conduct statistical estimates of national occurrence for regulated contaminants and evaluate the treatment technique information associated with control of pathogens, disinfectants, and disinfection byproducts. These national occurrence estimates and treatment technique information will support the SDWA section 1412(b)(9) mandate that requires the Agency to review the existing NPDWRs and determine whether revisions are appropriate. In addition, SDWA section 1445(g) requires the Agency to maintain a national drinking water contaminant occurrence database (i.e., the National Contaminant Occurrence Data (NCOD)) using occurrence data for both regulated and unregulated contaminants in public water systems (PWSs). This data collection will provide new occurrence data on regulated contaminants to maintain the NCOD.

It is in the interest of the Agency to minimize the burden on States (and other primacy agencies) by allowing submission of data in virtually any electronic format, and to provide States that use the Safe Drinking Water Information System State Versions (SDWIS/State) with extraction scripts if wanted.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 12.2 hours per State. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 56.

*Frequency of response:* One time only.

*Estimated total average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 681 hours.

*Estimated total annual costs:* $30,608. This includes an estimated burden cost of $30,608 and an estimated cost of $0 for capital investment or maintenance and operational costs.

It should be additionally noted that the values above should be considered estimated values and are from the current ICR approved by OMB. These values may change in part due to the scope modification; however, it is not expected to be significant.

**Are There Changes in the Estimates From the Last Approval?**

There is a potential for the estimated total cost to change compared with that identified in the ICR currently approved by OMB. The change will reflect the slight modification of the scope, revised burden hours, and updated labor costs. While the increase in the scope may increase the annual burden hour, the data extraction tool that assists States using SDWIS/State and the increased number of States utilizing this database (from those in the previous ICR) may likely minimize the increased annual burden hours. The anticipated burden hours could also decrease from that in the currently approved ICR based on feedback from the States about the actual number of hours utilized when States or primacy agencies chose to use the data extraction tool or load the data onto a secure website. The increase in labor costs, since the previous ICR, may increase the annual burden; however, it is anticipated that it will not be significant. Therefore, with the scope modification, revised burden hours, and updated labor costs, the change in the estimated annual costs may not be significant.

**What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 2, 2009.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. E9–21941 Filed 9–10–09; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0192; FRL–8435–2]**

## Pesticide Experimental Use Permit; Receipt of Application; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's receipt of an application 56228–EUP–UN from U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) requesting an experimental use permit (EUP) for the chemical Mammalian Gonadotropin Releasing Hormone (GnRH). The Agency has determined that the permit may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

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

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0192, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington,VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2009–0192. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Autumn Metzger, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5314; e-mail address: *metzger.autumn@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

## II. What Action is the Agency Taking?

Under section 5 of FIFRA, 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

*Submitter*: USDA's APHIS, (56228–EUP–UN).

*Pesticide Chemical*: Mammalian Gonadotropin Releasing Hormone (GnRH).

*Summary of Request*: USDA's APHIS, is requesting an EUP of GonaCon, an Immunocontraceptive Vaccine, containing the active ingredient GnRH, to investigate the efficacy of reproductive control, physiological side-effects and reproductive and social behavior on overabundant feral horses (*Equus cabalus*) in the Theodore Roosevelt National Park in North Dakota. The proposed EUP program would be initiated in October and November 2009, during which time study horses will be vaccinated and released and then monitored for approximately 5 years. Approximately 28 mares will be vaccinated with 2.0 milliliter (ml) solution, which is equivalent to .06 ml active ingredient per horse or 1.68 ml active ingredient total for the study. The total area of the park consists of 19,000 hectares (ha) (~46,950 acres), however the area where the study will be conducted will be much smaller than this as the horses only inhabit the south unit of the park. North Dakota will be the only state in which the proposed program will be conducted.

A copy of the application and any information submitted is available for public review in the docket established for this EUP application as described under **ADDRESSES**.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

### List of Subjects

Environmental protection, Experimental use permits.

Dated: September 2, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E9–21898 Filed 9–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–8597–3]**

## Environmental Impact Statements andRegulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

### Draft EISs

EIS No. 20090208, ERP No. D–FHW–F40449–IL, Illinois 336 Corridor Project (Federal Aid Primary Route 315), Proposed Macomb Bypass in McDonough County, to I–474 west of Peoria in Peoria County, Funding, McDonough, Fulton and Peoria Counties, IL

*Summary:* EPA expressed environmental concerns about wetland, floodplain, air quality, and upland forest impacts. EPA also requested additional information on traffic levels. Rating EC2.

EIS No. 20090237, ERP No. D–UMC–E11070–NC, U.S. Marine Corps Grow the Force at MCB Camp Lejeune, MCAS New River, and MCAS Cherry Point, To Provide the Infrastructure To Support the Permanent Increases at these three Installations, U.S. Army Corps Section 404 and 10 Permits, City of Jacksonville, NC

*Summary:* EPA expressed environmental concerns about aquatic habitat, wetland, and water quality impacts. EPA recommended that the USMC consider a hybrid alternative to minimize impacts to wetlands and other jurisdictional waters. Rating EC2.

EIS No. 20090239, ERP No. D–AFS–L65574–OR, Big Summit Allotment Management Plan, Proposes to Reauthorize Cattle Term Grazing Permits, Construct Range Improvements, and Restore Riparian Vegetation on Five Allotments, Lookout Mountain Ranger District, Ochoco National Forest, Crook County, OR

*Summary:* EPA expressed environmental concerns about impacts to water quality within creeks that are already on the Oregon State's 303(d) list and subsequent impacts to aquatic resources. Rating EC2.

EIS No. 20090242, ERP No. D–IBR–K39118–CA, Delta-Mendota Canal/California Aqueduct Intertie Project, Construction and Operation of a Pumping Plant and Pipeline Connection, San Luis Delta-Mendota Water Authority Project, Central Valley Project, Alameda and San Joaquin Counties, CA

*Summary:* EPA expressed environmental concerns about water supply reliability and the ability to meet water delivery targets. EPA recommended the FEIS describe efforts to better align contract obligations with existing and future water supplies; and explore reduced inflow and export scenarios. Rating EC2.

EIS No. 20090252, ERP No. D–NPS–D65041–DC, White-Tailed Deer Management Plan, To Develop a White-Tailed Deer Management Plan that Supports Long-Term Protection, Preservation and Restoration of Native Vegetation and other Natural and Cultural Resources in Rock Creek Park, Washington, DC

*Summary:* EPA does not object to the proposed project, but recommends that the project team continue to work with other agencies regarding deer management issues. Rating LO.

### Final EISs

EIS No. 20090258, ERP No. F–FRC–E05104–00, Catawba-Wateree Hydroelectric Project (FERC No. 2232), Application for Hydroelectric License, Catawba and Wateree Rivers in Burke, McDowell, Caldwell, Catawba, Alexander, Iredell, Mecklenburg, Lincoln and Gaston Counties, NC and York, Lancaster, Chester, Fairfield and Kershaw Counties, SC

*Summary:* EPA continues to have environmental concerns about impacts to aquatic species in the Catawba River below the Bridgewater development.

EIS No. 20090260, ERP No. F–COE–G39049–TX, Calhoun Port Authority's, Proposed Matagorda Ship Channel Improvement Project to Widen and Deepen Berthing Facilities, U.S. Army COE Section 10 and 404 Permits, Calhoun and Matagorda Counties, TX

*Summary:* No formal comment letter was sent to the preparing agency.

EIS No. 20090282, ERP No. F–FRC–D05126–VA, Smith Mountain Pumped Storage Project (FERC No. 2210–169). Application for Hydropower License to continue Operating the 636-megawatt Pumped Storage Project, Roanoke River, Smith Mountain Pumped Storage Project (FERC No. 2210–169). Application for Hydropower License to continue Operating the 636-megawatt Pumped Storage Project, Roanoke River, Bedford, Campbell, Franklin, and Pittsylvania Counties, VA

*Summary:* EPA expressed environmental concerns about water temperature, aquatic life and wetland impacts. EPA requested additional information on avoidance, minimization, and mitigation measures for the above impacts.

EIS No. 20090293, ERP No. F–NPS–D61062–PA, White-Tailed Deer Management Plan, Development of a Deer Management Strategy that Supports Protection, Preservation, and Restoration of Native Vegetation, Implementation, Valley Forge National Historical Park, Chester and Montgomery Counties, PA

*Summary:* EPA does not object to the proposed project.

EIS No. 20090261, ERP No. FS–GSA–D81027–MD, U.S. Food and Drug Administration (FDA) Headquarters Consolidation, Master Plan Update, Federal Research Center at White Oak, Silver Spring, Montgomery County, MD

*Summary:* EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action.

Dated: September 8, 2009.

**Kenneth Mittelholtz,**

*Deputy Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E9–21943 Filed 9–10–09; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–8597–2]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed 08/31/2009 Through 09/04/2009

Pursuant to 40 CFR 1506.9

EIS No. 20090310, Draft Supplement, AFS, ID, Small-Scale Suction Dredging in Lolo Creek and Moose Creek Project, Updated Information to Analysis Three Alternatives, Clearwater National Forest, North Fork Ranger District, Clearwater and Idaho Counties, ID, *Comment Period Ends:* 10/26/2009, *Contact:* Doug Gober 208–476–4541

EIS No. 20090311, Final EIS, USN, WA, Naval Base Kitsap—Bangor, Construct and Operate a Swimmer Interdiction Security System (SISS), Silverdale Kitsap County, WA, *Wait Period Ends:* 10/13/2009, *Contact:* Shannon Kasa 619–53–3889

EIS No. 20090312, Draft EIS, COE, OH, Cleveland Harbor Dredged Material Management Plan, Operations and Maintenance, Cuyahoga County, OH, *Comment Period Ends:* 10/26/2009, *Contact:* Frank O'Connor 716–879–4131

EIS No. 20090313, Draft EIS, AFS, CA, Freds Fire Reforestation Project, Implementation, EL Dorado National Forest, Placerville and Pacific Ranger Districts, El Dorado County, CA, *Comment Period Ends:* 10/26/2009, *Contact:* Robert Carroll 530–647–5386

EIS No. 20090314, Draft EIS, FHW, IL, TIER 1—Elgin O'Hare—West Bypass Study, To Identify Multimodal Transportation Solutions, Cook and DuPage Counties, IL, *Comment Period Ends:* 10/26/2009, *Contact:* Matt Fuller 217–492–4625

EIS No. 20090315, Draft EIS, FTA, CA, Crenshaw Transit Corridor Project, Proposes to Improve Transit Services, Funding, Los Angeles County Metropolitan Transportation Authority (LACMTA), Los Angeles County, CA, *Comment Period Ends:* 10/26/2009, *Contact:* Roderick Diaz 213–922–3018

EIS No. 20090316, Final EIS, FTA, 00, PROGRAMMATIC—Streamlining the Processing of Experimental Permit Applications, Issuing Experimental Permits for the Launch and Reentry of Useable Suborbital Rockets, *Wait Period Ends:* 10/13/2009, *Contact:* Daniel Czelusniak 202–267–5924

EIS No. 20090317, Draft EIS, USA, VA, Fort Monroe US Army Garrison Base Realignment and Closure (BRAC) 2005 Disposal and Reuse of Surplus Nonreverting Property, Fort Monroe, VA, *Comment Period Ends:* 10/26/2009, *Contact:* Bob Ross 703–602–2878

EIS No. 20090318, Draft EIS, USA, WA, Fort Lewis Army Growth and Force Structures Realignment, Implementation, Fort Monroe and Yakima Training Center, Kittitas, Pierce, Thurston and Yakima Counties, WA, *Comment Period Ends:* 10/26/2009, *Contact:* B. Van Hoesen 253–966–1780

EIS No. 20090319, Final EIS, USA, AK, U.S. Army Alaska (USARAK) Project, Proposes the Stationing and Training of Increased Aviation Assets, Fort Wainwright, Fairbank, AK, *Wait Period Ends:* 10/13/2009, *Contact:* Jennifer Shore 703–602–4238

**Amended Notices**

EIS No. 20090304, Final EIS, AFS, 00, Inyo National Forest Motorized Travel Management Project, Implementation, Inyo, Mono, Fresno, Madera and Tulare Counties, CA and Mineral and Esmeralda Counties, NV, *Wait Period Ends:* 10/05/2009, *Contact:* Susan Joyce 760–873–2516

Revision to FR Notice Published 09/04/2009: Correction to Counties and States

EIS No. 20090309, Final EIS, FTA, MO, East Corridor Project, Proposes Commuter Rail Transit from downtown Denver to International Airport (DIA), Denver, Adams, Arapahoe, Jefferson and Douglas Counties, CO, *Wait Period Ends:* 10/05/2009, *Contact:* David Beckhouse 720–963–3306

Revision to FR Notice Published 09/04/2009: Correction to Title and Federal Agency.

Dated: September 8, 2009.

**Ken Mittelholtz,**

*Deputy Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E9–21944 Filed 9–10–09; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8956–1]**

## Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Kennebec Water District in Waterville, ME

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Kennebec Water District (KWD) (also known as the ''Water District'') in Waterville, Maine for the purchase of

specific cast iron valve boxes. This is a project specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA projects that may wish to use the same product must apply for a separate waiver based on project specific circumstances. These valve boxes meet KWD's technical specifications and requirements, reflecting the Water District's operation and maintenance experience with these boxes which are currently manufactured in Canada by the Bibby Foundry. The Acting Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. KWD has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred in this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of specific cast iron valve boxes for the proposed project being implemented by the Water District that may otherwise be prohibited under Section 1605(a) of the ARRA.

**DATES:** *Effective Date:* September 2, 2009.

**FOR FURTHER INFORMATION CONTACT:** Katie Connors, Environmental Engineer, (617) 918–1658, or David Chin, Environmental Engineer, (617) 918–1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, One Congress Street, CMU, Boston, MA 02114.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111–5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to the Kennebec Water District (KWD) in Waterville, Maine for the acquisition of specific cast iron valve boxes manufactured in Canada by the Bibby Foundry. Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Some utilities in the Northeast United States, including the KWD, have standardized their design specifications based on their operation and maintenance experience to utilize a high flange slide riser for valve boxes in their collection and distribution systems. The top section of the valve box is 36 inches long and has its flange designed so that the box is able to move up and down with the pavement surface to deal with the deeper frost cover in this area of Maine.

After completion of the bid phase, the contract supplier for the KWD was unable to locate any domestic valve box manufacturers with products that met the proposed project specifications. The KWD requires 22 valve boxes to complete a proposed water main replacement project. The cost of the 22 valve boxes is $2,901 and accounts for approximately 3% of the total value of the iron, steel, and manufactured goods on the project. These non-domestic valve boxes are eligible to be covered under the national revised de minimis waiver dated July 24, 2009. However, since the estimated total cost of all non-domestic materials was greater than 5% of the total cost for iron, steel, and manufactured goods used and incorporated in the proposed project, the KWD requested a project waiver for these specific valve boxes.

The 36-inch top section length valve box, which the KWD is proposing to use, works well for several reasons: (1) The flange is high and locked into the pavement so the top riser moves with the pavement surface and prevents frost from raising the box above the road surface; (2) its longer length of 36″ keeps it more aligned and straight, and is better able to contend with the 6 foot frost depth; (3) it has the top-flange box support area that is more than double that of the no-flange valve box top to help minimize settlement and maintain alignment; and (4) it will also support greater traffic loads compared to a no-flange valve box top, which will further minimize settlement.

There are valve boxes manufactured domestically. But based on the information provided to EPA by the KWD, the domestic manufacturers do not have the necessary top section length required. The KWD requires a top section length of 36 inches based on its past and current operations and maintenance experience. Without the necessary length in the top section, extensions would need to be connected together or ''stacked'' on top of one another. According to the KWD, stacking extensions to provide length beyond the standard 26-inch top section available through domestic manufacturers makes it difficult to keep the box plumb in the long term. There are three joints involved with stacking extensions and when they get out of alignment due to road settlement, it becomes difficult to insert a long handled ''tee wrench'' down into the box over the operating nut to operate the valve from ground level.

If a valve box cannot be opened, or if the operating nut cannot be accessed to operate the valve from the ground level, it may require replacement of the entire unit, resulting in additional costs to the water utility that could have been avoided. Over the past several years, the KWD has been replacing many of the older non-functioning valve boxes with the newer valve boxes, which meet their design specifications. The KWD has standardized this practice in order to simplify operation and maintenance and to minimize unnecessary repair and replacement costs in the future.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American provisions of P.L. 111–5, the 'American Recovery and Reinvestment Act of 2009,' '' defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' Based on the information provided to EPA and to the best of our knowledge at this time, there do not appear to be other cast iron valve boxes with the top flange manufactured in the United States available to meet the Water District's exact technical specifications and requirements. The Water District has established a proper basis to specify the required cast iron valve boxes with the top flange and established that this manufactured good was not available from a domestic producer.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring utilities such as the KWD to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for ARRA State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further

delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

EPA's national contractor prepared a technical assessment report for the Kennebec Water District dated June 25, 2009 on the waiver request submitted. The report for the KWD determined that the waiver request submittal was complete and that adequate technical information was provided. The report also confirmed the waiver applicant's claims that there were presently no comparable cast iron valve boxes manufactured domestically. The technical review team found that domestic manufacturers do produce cast iron valve boxes, but could not identify any that offered the top flange product with the necessary top section length of 36 inches.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the KWD is sufficient to meet the criteria listed under Section 1605(b), OMB's regulations at 2 CFR 176.60–176.170, and in the April 28, 2009, ''Implementation of Buy American provisions of P.L. 111–5, the ''American Recovery and Reinvestment Act of 2009'' Memorandum'': Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this individual project waiver is the authorization provided in Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the Water District's technical specifications and requirements, a waiver from the Buy American requirement is justified.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the Kennebec Water District is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of specified cast iron valve boxes using ARRA funds as specified in the Water District's requests of June 23, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

**Authority:** Public Law 111–5, section 1605

Dated: September 2, 2009.

**Ira W. Leighton,**

*Acting Regional Administrator, Region I, New England.*

[FR Doc. E9–21940 Filed 9–10–09; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:11 a.m. on Wednesday, September 9, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director John C. Dugan (Comptroller of the Currency), seconded by Director Thomas J. Curry (Appointive), concurred in by Vice Chairman Martin J. Gruenberg, Director John E. Bowman (Acting Director, Office of Thrift Supervision), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 - 17th Street, NW., Washington, DC.

Dated: September 9, 2009.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E9–22071 Filed 9–9–09; 4:15 pm]

BILLING CODE P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Title IV–E Foster Care Eligibility Review and Child and Family Service Reviews; Final Rule.

*OMB No.:* 0970–0214.

*Description:* The following five separate activities are associated with this information collection: Foster Care Eligibility Review (FCER) Program Improvement Plan; Child and Family Services Reviews (CFSR) State agency Statewide Assessment; CFSR On-site Review; CFSR Program Improvement Plan; and Anti-Discrimination Enforcement Corrective Action Plan. The collection of information for review of Federal payments to States for foster care maintenance payments (45 CFR 1356.71(i)) is authorized by title IV–E of the Social Security Act (the Act), section 474 [42 U.S.C. 674]. The Foster Care Eligibility Reviews (FCER) ensure that States claim title IV–E funds only on behalf of title IV–E eligible children. The collection of information for review of State child and family services programs (45 CFR 1355.33(b), 1355.33(c) and 1355.35(a)) is to determine whether such programs are in substantial conformity with State plan requirements under parts B and E of the Act and is authorized by section 1123(a) [42 U.S.C. 1320a–1a] of the Act. The CFSR looks at the outcomes related to safety, permanency and well-being of children served by the child welfare system and at seven systemic factors that support the outcomes. Section 474(d) of the Act [42 U.S.C. 674] deploys enforcement provisions (45 CFR 1355.38(b) and (c)) for the requirements at section 4371(a)(18) [42 U.S.C. 671], which prohibit the delay or denial of foster and adoptive placements based on the race, color, or national origin of any of the individuals involved. The enforcement provisions include the execution and completion of corrective action plans when a State is in violation of section 471(a)(18) of the Act. The information collection is needed: (1) To ensure compliance with title IV–E foster care eligibility requirements; (2) to monitor State plan requirements under titles IV–B and IV–E of the Act, as required by Federal statute; and (3) to enforce the title IV–E anti-discrimination requirements through State corrective action plans. The resultant information will allow ACF to determine if States are in compliance with State plan

requirements and are achieving desired outcomes for children and families, help ensure that claims by States for title IV–E funds are made only on behalf of title IV–E eligible children, and require States to revise applicable statutes, rules, policies and procedures, and provide proper training to staff, through the development and implementation of corrective action plans. These reviews not only address compliance with eligibility requirements but also assist States in enhancing the capacities to serve children and families. In computing the number of burden hours for this information collection, ACF based the annual burden estimates on ACF's and States' experiences in conducting reviews and developing program improvement plans.

*Respondents:* State Title IV–B and Title IV–E Agencies.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| 45 CFR 1356.7(i) Program Improvement Plan (FCER) | 7 | 1 | 90 | 630 |
| 45 CFR 1366.33(b) Statewide Assessment (CFSR).. | 13 | 1 | 240 | 3,120 |
| 45 CFR 1355.33(c) On-site Review (CFSR) | 13 | 1 | 1,170 | 15,210 |
| 45 CFR 1355.35(a) Program Improvement Plan (CFSR) | 13 | 1 | 240 | 3,120 |
| 45 CFR 1355.38(b) and (c) Corrective Action | 1 | 1 | 780 | 780 |

*Estimated Total Annual Burden Hours:* 22,860.

*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 4, 2009.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. E9–21890 Filed 9–10–09; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier CMS–10291 and CMS–10292]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Dental Provider and Benefit Information Posted on Insure Kids Now! Web site; *Form Number:* CMS–10291 (OMB#: 0938–1065); *Use:* Section 501 of the Children's Health Insurance Program Reauthorization Act (CHIPRA) requires the Secretary to work with States, pediatric dentists, and other dental providers to include on the Insure Kids Now (IKN) Web site, a ''current and accurate list of all dentists and providers within each State that provide dental services to children enrolled in the State plan (or waiver) under Medicaid or the State child health plan (or waiver) under CHIP. Section 501 of CHIPRA also requires the Secretary to ensure the list is updated at least quarterly and includes the description of the dental services provided under Medicaid or CHIP and whether the services are provided through a State plan or waiver. The Secretary shall also post on the IKN Web site State specific information on available dental benefits. This information collection requirement will allow States to collect the information on the dental providers and dental benefits in accordance with CHIPRA. *Frequency:* Yearly and Quarterly; *Affected Public:* State, Tribal and Local governments; *Number of Respondents:* 51; *Total Annual Responses:* 255; *Total Annual Hours:* 9,180. (For policy questions regarding this collection contact Nancy Goetschius at 410–786–0707. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* State Medicaid HIT Plan and Templates for Implementation of Section 4201 of ARRA; *Form Number:* CMS–10292 (OMB#: 0938–NEW); *Use:* This information is being requested in order that States can submit documentation to CMS for review and approval in order that States can implement the Medicaid program and draw down Federal financial participation. The American Reinvestment and Recovery Act of 2009 (ARRA) provides States with the flexibility to request funds to develop a

health information technology vision and road to get to the ultimate goal of meaningful use of certified electronic health records technology. We will be sending State Medicaid Directors letters and templates for the State Medicaid Hit Plan (SMHP), the Planning Advance Planning Document (PAPD) and the Implementation Advance Planning Document (IAPD) to States in an effort to request these changes if they so choose to make the process as simple as possible. *Frequency:* Yearly, once and/or occasionally; *Affected Public:* State, Tribal and Local governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 280. (For policy questions regarding this collection contact Donna Schmidt at 410–786–5532. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *November 10, 2009:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attention:* Document Identifier/OMB Control Number, Room C4–26–0,5, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 4, 2009.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E9–21956 Filed 9–10–09; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10078, CMS–10288, CMS–10289 and CMS–10097]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Matching Grants to States for the Operation of High Risk Pools; *Use:* CMS is requiring this information as a condition of eligibility for grants that were authorized in the Trade Act of 2002, the Deficit Reduction Act of 2005 and the State High Risk Pool Funding Extension Act of 2006. The information is necessary to determine if a State applicant meets the necessary eligibility criteria for a grant as required by law. The respondents will be States that have a high risk pool as defined in sections 2741, 2744, or 2745 of the Public Health Service Act. The grants will provide funds to States that incur losses in the operation of high risk pools. High risk pools are set up by States to provide health insurance to individuals that cannot obtain health insurance in the private market because of a history of illness; Form Numbers: CMS–10078 (OMB#: 0938–0887); *Frequency:* Recordkeeping, Reporting—Occasionally; Affected Public: State, Local and Tribal Governments; *Number of Respondents:* 31; *Total Annual Responses:* 31; *Total Annual Hours:* 1,240. (For policy questions regarding this collection contact Paul Scholz at 410–786–6178. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* State Plan Pre-Print to Implement Required Dental Benefits Pursuant of Children's Health Insurance Program Reauthorizing Act (CHIPRA) 2009; *Use:* Section 501 of CHIPRA 2009 amends XXI and requires that ''child health assistance provide to a targeted low-income child shall include coverage of dental services necessary to prevent disease and promote oral health, restore oral structures to health and function, and treat emergency conditions.'' States that provide coverage in a separate Children's Health Insurance Program may choose between two methods of providing the dental services required in Section 501. The State may define the services in the dental benefit package and demonstrate that it includes all the required services. Alternatively, the State may provide a dental benefit package that is equivalent to one of the three benchmark packages described in the statute. In order to implement one of these options and comply with the statute, States must amend their State Plan using the State Plan pre-print. *Form Number:* CMS–10288 (OMB#: 0938–NEW); *Frequency:* Reporting One-time; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 1530. (For policy questions regarding this collection contact Nancy Goetschius at 410–786–0707. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Optional Dental-only Supplemental Coverage State Plan Amendment Template; *Use:* CHIPRA 2009 provides States with an option to provide supplemental dental-only coverage to children who would be eligible to enroll in the State's Children's Health Insurance Program (CHIP), except that they already have health insurance coverage, either through a group health plan or employer sponsored insurance. If the health insurance plan the child is enrolled in does not provide dental benefits, the State may provide the child with the same State-defined dental package or benchmark benefit plan provided to children who are eligible for the entire CHIP benefit package. The child will only be entitled to the dental services provided to other CHIP children.

In order to choose this option, States must comply with all other

requirements of the statute regarding cost sharing, income eligibility level, absence of a waiting list for their entire CHIP program (not just for dental coverage), and not providing more favorable treatment to children eligible for the supplemental dental benefit under this option. In order to implement this option States must amend their State Plan using the Supplemental Dental Benefits State Plan Amendment Template. *Form Number:* CMS–10289 (OMB#: 0938–NEW); *Frequency:* Reporting One-time; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 1020. (For policy questions regarding this collection contact Nancy Goetschius at 410–786–0707. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* The Medicare Contractor Provider Satisfaction Survey (MCPSS); *Use:* Section 911 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) mandated that CMS develop contract performance requirements and standards for measuring provider satisfaction. CMS developed the MCPSS to meet this requirement. Each year CMS obtains information from Medicare providers and suppliers via a survey about satisfaction, attitudes, and perceptions regarding the services provided by Medicare fee-for-service (FFS) contractors, *i.e.,* carriers, fiscal intermediaries (FIs), regional home health intermediaries (RHHIs), durable medical equipment Medicare administrative contractors (DME MACs) and Part A/Part B MACs. The survey focuses on basic business functions provided by the Medicare contractors, such as provider inquiries, provider outreach and education, claims processing, appeals, provider enrollment, medical review, and provider audit and reimbursement. CMS uses the survey to monitor its contractors and to provide incentives for improved performance.

CMS seeks to minimally revise the survey instrument for the 2010 administration. CMS would like to obtain more focused feedback on the providers' perception of their interactions with their contractor. By narrowing the focus of the questions, CMS can provide more specific feedback to the contractors in targeted areas of performance. *Form Number:* CMS–10097 (OMB#: 0938–0915); *Frequency:* Reporting—Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 25,000; *Total Annual Responses:* 25,000; *Total Annual Hours:* 9,349. (For policy questions regarding this collection contact Teresa Mundell at 410–786–9176. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *October 13, 2009.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: September 4, 2009.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E9–21954 Filed 9–10–09; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[30Day-09–0039]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Agency for Toxic Substances and Disease Registry (ATSDR) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC/ATSDR Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to the CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202)395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Tremolite Asbestos Registry (TAR)—Extension—Agency for Toxic Substances and Disease Registry (ATSDR).

**Background and Brief Description**

The Agency for Toxic Substances and Disease Registry (ATSDR) requests an extension of data collection and procedures for the previously approved Tremolite Asbestos Registry (TAR) project for an additional three years. ATSDR is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Re-authorization Act (SARA), to establish and maintain national registries of persons who have been exposed to hazardous substances in the environment and national registries of persons with illnesses or health problems resulting from such exposure. In 2003, ATSDR created the Tremolite Asbestos Registry (TAR) as a result of this legislation in an effort to provide scientific information about potential adverse health effects people develop as a result of exposure to the amphibole fibers that are found in vermiculite mined from Libby, Montana. The purpose of the TAR is to improve communication with people at risk for developing asbestos-related diseases subsequent to exposure to Libby amphibole and to support research activities related to TAR registrants. The TAR is currently composed of information about former vermiculite workers, the people that lived with them during their tenure as vermiculite workers (i.e., the workers' household contacts), and people who participated in screening programs funded by ATSDR conducted in Libby and other sites that received Libby vermiculite. TAR participants are interviewed to collect information on exposure pathways, tobacco use, and health outcomes. The standardized TAR survey is administered using a computer-assisted personal interview instrument.

The number of annual respondents will vary little from year to year. We anticipate that 500 persons per year could be added during each of the next 3 years in addition to the 4,500 registrants already enrolled. These newly enrolled respondents will be interviewed using the Baseline interview instrument. Optimally, one third of the follow-up interviews will be conducted each year for the next three years using the Follow-up interview instrument. The maximum burden for the baseline survey is 30 minutes and 20 minutes for the follow-up survey.

There is no cost to registrants. The total estimated annualized burden hours are 750.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Data collection instruments | Number of respondents | Number responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Persons exposed | Baseline TAR Questionnaire | 500 | 1 | 30/60 |
| | Follow-up TAR questionnaire | 1,500 | 1 | 20/60 |

Dated: September 3, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–21915 Filed 9–10–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day-09–0212]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at 404–639–5960 or send comments to CDC/ATSDR Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

National Hospital Discharge Survey (NHDS) (OMB# 0920–0212 exp. 10/31/2011)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. This three-year clearance request includes the data collection for 2010, 2011, and 2012 of the redesigned National Hospital Discharge Survey.

The National Hospital Discharge Survey (NHDS) has been conducted continuously by the National Center for Health Statistics, CDC, since 1965. It is the principal source of data on inpatient utilization of short-stay, non-Federal hospitals and is the principal annual source of nationally representative estimates on the characteristics of discharges, lengths of stay, diagnoses, surgical and non-surgical procedures, and patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are measured.

Although the current NHDS is still fulfilling its intended functions, it is based on concepts from the health care delivery system, as well as the hospital and patient universes, of previous decades. It has become clear that a redesign of the NHDS that provides greater depth of information is necessary. Consequently, 2010 will serve as the last year in which the current NHDS will be fielded. Meanwhile, the redesigned NHDS is scheduled to begin in 2010.

Due to budgetary constraints, the new sample of 240 hospitals drawn for the redesigned NHDS will be phased in over two years. In 2010, data collection will begin in 80 sampled hospitals. Data collection for those initial 80 sites will continue into 2011 with the addition of another 160 sampled hospitals, for a grand total of 240. All 240 hospitals will be designated to participate in the 2012 survey. Within each sampled hospital, a stratified, random sample of 120 discharges will be targeted. In the redesigned survey all data will be abstracted by trained health care staff under contract. All data will be obtained from hospital records and charts and computer systems.

The data items to be collected in the redesigned NHDS will include significant additional details. Patient level data items to be collected include basic demographic information as well as personal identifiers, such as Social Security Number (last 4 digits), name and medical record number; clinical laboratory results, such as hematocrit and white blood cell count; and financial billing and medical record data. Facility level data items include demographic information, clinical capabilities, and financial information.

Users of NHDS data include, but are not limited to CDC, Congressional Research Office, Office of the Assistant Secretary for Planning and Evaluation (ASPE), American Health Care Association, Centers for Medicare & Medicaid Services (CMS), and Bureau of the Census. Data collected through NHDS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. NHDS data have been used extensively in the development and monitoring of goals for the Year 2000 and 2010 Healthy People Objectives. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, *Health, United States.* Other users of these data include universities, contract research organizations, many in the private sector, foundations, and a variety of users in the print media. There is no

cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form | Respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| CURRENT NHDS 2010: | | | | | |
| Primary Procedure Hospital (PPH) Sample Listing Sheet. | Medical Coder | 7 | 12 | 25/60 | 35 |
| PPH Medical Abstract Form | Medical Coder | 7 | 250 | 5/60 | 146 |
| PPH Transmittal Notice | Medical Coder | 7 | 12 | 1/60 | 1 |
| Alternate Procedure Hospital—Locating medical records. | Medical Coder | 20 | 250 | 1/60 | 83 |
| In-House Tape or Printout Hospital—Computer programming and submission. | Medical Coder | 14 | 12 | 13/60 | 36 |
| Hospital Interview Questionnaire | Hospital CEO/CFO | 5 | 1 | 2 | 10 |
| REDESIGNED NHDS 2010–2012: | | | | | |
| Survey presentation to hospital | Hospital CEO/CFO | 80 | 1 | 1 | 80 |
| Induction (including initial facility questionnaire). | Director of health information management. | 80 | 1 | 4 | 320 |
| Post induction annual facility questionnaire. | Director of health information management. | 107 | 1 | 2 | 214 |
| Sample hospital discharges, obtain UB–04 & payment data. | Director of health information management. | 187 | 120 | 14/60 | 5,236 |
| Verify sampling & re-abstract medical records. | Director of health information management. | 26 | 10 | 7/60 | 30 |
| Total | | | | | 6,191 |

Dated: September 2, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–21914 Filed 9–10–09; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–09–09CK]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Asthma Information Reporting System (AIRS)—New—Air Pollution and Respiratory Health Branch (APRHB), National Center for Environmental Health (NCEH, Centers for Disease Control and Prevention (CDC)).

*Background and Brief Description*

In 1999, the CDC began developing its National Asthma Control Program, a population-based, public health approach to addressing the burden of asthma. The program supports the goals and objectives of ''Healthy People 2010'' for asthma and is based on the public health principles of surveillance, partnerships, and interventions. This data collection request will provide NCEH with routine information, through a semi-annual Management Information System, AIRS, about the activities and performance of the state and territorial grantees funded under the National Asthma Control Program.

The primary purpose of the National Asthma Control Program is to develop program capacity to address asthma from a public health perspective to bring about: (1) A focus on asthma-related activity within states; (2) an increased understanding of asthma-related data and its application to program planning and evaluation through the development and maintenance of an ongoing asthma surveillance system; (3) an increased recognition, within the public health structure of states, of the potential to use a public health approach to reduce the burden of asthma; (4) linkages of state health agencies to other agencies and organizations addressing asthma in the population; and (5) implementation of interventions to achieve positive health impacts, such as reducing the number of deaths, hospitalizations, emergency department visits, school or work days missed, and limitations on activity due to asthma.

The proposed AIRS management information system will be comprised of multiple components that enable the electronic reporting of three types of

data/information from state asthma control programs: (1) Information that is currently collected as part of interim (semi-annual) and end-of-year progress reporting, (2) Aggregate level reports of surveillance data on long-term program outcomes, and (3) Specific data indicative of progress made on: Partnerships, surveillance, interventions, and evaluation.

Currently, data is collected on an interim (semi-annual) basis from state asthma control programs as part of regular reporting of cooperative agreement activities. Programs report information such as progress to date on accomplishing intended objectives, programmatic changes, changes to staffing or management, and budgetary information. Regularly reporting this information is a requirement of the co-operative agreement mechanism utilized to fund state asthma control programs. Information in this section will be consistent with previous reporting by states through Grants.gov. States will be required to submit interim (semi-annual) and year-end progress report information into AIRS, thus this type of programmatic information on activities and objectives will be collected twice per year (interim report and end-of-year report).

The National Asthma Control Program at CDC has access to and analyzes national-level asthma surveillance data (*http://www.cdc.gov/asthma/asthmadata.htm*). With the exception of data from the Behavioral Risk Factor Surveillance System (BRFSS), analyses cannot be conducted at the level of the state. Therefore, as part of AIRS, state asthma control programs will be asked to submit aggregate surveillance data to allow calculation of state asthma surveillance indicators across all funded states (where data is available) in a standardized manner. Data likely to be requested through this system include: Hospital discharges (with asthma as first listed diagnosis), and emergency department visits (with asthma as first listed diagnosis). States will be required to submit this information into AIRS once per year, in conjunction with the end of year reporting of activities and objectives, described above.

National and state asthma surveillance data provide information useful to examining progress on long-term outcomes of state asthma programs. To identify appropriate indicators of program implementation and short-term outcomes, CDC convened and facilitated workgroups comprised of state asthma control program representatives over the course of two years. In collaboration with these workgroups, the CDC generated specific questions (qualitative and quantitative in nature) intended to collect data on key features of state asthma control programs: Partnerships, surveillance, interventions, and evaluation. States will be asked to provide answers to these questions once per year in conjunction with the end of year reporting of activities and objectives, described above. These data will be used to foster a continuous learning environment about what is working in state asthma programs and to identify potential areas for improvement.

There will be no cost for grantees to participate in AIRS.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Forms | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| State Health Departments | Interim report on activities and objectives. | 36 | 1 | 2 | 72 |
| | End of year report on activities, objectives and aggregate surveillance. | 36 | 1 | 6 | 216 |
| Total | | 36 | 2 | 8 | 288 |

Dated: September 3, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–21913 Filed 9–10–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–09–09CL]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of data collection plans and instruments, call the CDC Reports Clearance Officer on 404–639–5960 or send comments to CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Calibration of the Short Strengths and Difficulties Questionnaire (SDQ) in the National Health Interview Survey (NHIS)—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. Section 520 [42 U.S.C. 290bb-31] of the Public Health

Service Act, establishes the Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), and authorizes the CMHS to conduct surveys with respect to mental health. To monitor the prevalence of children and youth with mental health problems, CMHS and the National Institute of Mental Health (NIMH), through a reimbursable agreement with the NCHS have funded questions on children's mental health on the National Health Interview Survey (NHIS).

One component of the NHIS is the short Strengths and Difficulties Questionnaire (short SDQ), a module that has obtained data on the mental health of children aged 4–17 years since 2001. As part of its mission, CMHS has undertaken the task of improving its methods for providing national estimates related to child mental health, specifically by conducting studies that determine validity and appropriate cut-points for measuring serious psychological distress in adults. To ensure that the short SDQ is a valid measure of child mental health, the proposed study calibrates the SDQ on the NHIS to a standard psychiatric measure. Highly trained clinical interviewers will administer, via telephone, the Child and Adolescent Psychiatric Assessment (CAPA) or the Pre-School Age Psychiatric Assessment (PAPA) to the parents of a sample of children aged 4–17 years identified in the NHIS as having mental health problems. Children aged 9–17 will also be interviewed using Child and Adolescent Psychiatric Assessment (CAPA). Clinical interviewers will also administer these assessments to a suitable control group of parents and children. One part of this voluntary study will investigate the use of incentives which may be paid to all parents, and another incentive may be paid to all parents who complete the clinical interview. A 24 month clearance is being sought to conduct this study.

Data collected in the follow-up interviews will then be used to calibrate the short SDQ as it is used in the NHIS. Data will not be used to produce national estimates.

This study includes a pilot study of 36 children and 50 parents to test the procedures and methods, including the necessity of an incentive, followed by a full survey of approximately 400 parents and 300 children.

There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

| Type of survey | Type of respondent | Number of respondents | Number of responses per respondent | Average burden per response in hours | Total burden in hours |
|---|---|---|---|---|---|
| Pilot | Parents | 25 | 1 | 40/60 | 17 |
| | Children | 18 | 1 | 28/60 | 8 |
| Full Calibration | Parents | 200 | 1 | 40/60 | 133 |
| | Children | 150 | 1 | 28/60 | 70 |
| Total | | | | | 228 |

Dated: September 2, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–21912 Filed 9–10–09; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; 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 Library of Medicine Special Emphasis Panel.

*Date:* October 22, 2009.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, 6705 Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Zoe E. Huang, MD, Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, MSC 7968, Bethesda, MD 20892–7968, 301–594–4937. *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 2, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–21770 Filed 9–10–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biomedical Library and Informatics Review Committee, November 5, 2009, 8 a.m. to November 6, 2009, 2 p.m., National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892 which was published in the **Federal Register** on July 24, 2009, 74 FR 36726.

The meeting will end on November 6, 2009 at 9 a.m. The meeting is closed to the public.

Dated: August 28, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–21766 Filed 9–10–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Eye Council.

*Date:* September 24, 2009.

*Closed:* 8:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

*Open:* 1:30 p.m. to 5 p.m.

*Agenda:* Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

*Contact Person:* Andrew P. Mariani, PhD, Executive Secretary, National Advisory Eye Council, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892, (301) 451–2020, *apm@nei.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

*Information is also available on the Institute's/Center's home page: http://www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 28, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–21769 Filed 9–10–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; 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 Library of Medicine Special Emphasis Panel.

*Date:* November 6, 2009.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd floor, boardroom, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Arthur A. Petrosian, PhD, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253. *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 28, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–21772 Filed 9–10–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer 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 Cancer Institute Initial Review Group; Subcommittee F-Manpower & Training; NCI–F Manpower & Training Grants.

*Date:* October 5–6, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Lynn M. Amende, PhD, Scientific Review Officer, Resources And Training Review Branch, Division Of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd, Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 1, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–21774 Filed 9–10–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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; Behavioral Genetics and Epidemiology Member Applications.

*Date:* September 16–18, 2009.

*Time:* 11 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Heidi B. Friedman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–0906, *hfriedman@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; ARRA/SlO Radiation.

*Date:* September 22, 2009.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Chicago, 151 East Wacker Drive, Chicago, IL 60601.

*Contact Person:* Bo Hong, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@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.

(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: September 1, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–21775 Filed 9–10–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biomedical Computing and Health Informatics Study Section, October 2, 2009, 3 p.m. to October 2, 2009, 6 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 which was published in the **Federal Register** on August 13, 2009, 74 FR 40823–40824.

The meeting will be held October 2, 2009, from 8 a.m. to 5 p.m. at the Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817. The meeting is closed to the public.

Dated: August 28, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–21777 Filed 9–10–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; 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:* Communication Disorders Review Committee.

*Date:* October 14–15, 2009.

*Time:* October 14, 2009, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

*Time:* October 15, 2009, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

*Contact Person:* Christopher A. Moore, PhD, Scientific Review Administrator, National Institute of Health, NIDCD, 6120 Executive Blvd., MSC 7180, Bethesda, MD 20892, 301–496–8683, *moorechristopher@nidcd.nih.gov.*

(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. E9–21779 Filed 9–10–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

*Date:* September 22–23, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

*Contact Person:* Yi-Hsin Liu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–451–1327, *liuyh@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; Oral and Dental ARRA.

*Date:* September 23, 2009.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

*Contact Person:* Yi-Hsin Liu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–451–1327, *liuyh@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RAID Roadmap Initiative.

*Date:* September 23–25, 2009.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Steven J. Zullo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301–435–2810, *zullost@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. E9–21782 Filed 9–10–09; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1857–DR; Docket ID FEMA–2008–0018]**

### New York; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1857–DR), dated September 1, 2009, and related determinations.

**DATES:** *Effective Date:* September 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 1, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe storms and flooding during the period of August 8–10, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jaime E. Forero, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Cattaraugus, Chautauqua, and Erie Counties for Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–21966 Filed 9–10–09; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5280–N–35]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**DATES:** *Effective Date: September 11, 2009.*

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 3, 2009.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

[FR Doc. E9–21706 Filed 9–10–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5344–N–01]**

### Notice of National Exceptions to Section 1605 of the Recovery Act (Buy American Requirement) Applicable to Public and Indian Housing Recovery Act Funds

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain national exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds.

**FOR FURTHER INFORMATION CONTACT:** Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–4000, telephone 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Recovery Act awarded an additional $4,000,000,000 for the ''Public Housing Capital Fund.'' Section 1605(a) of the Recovery Act, the ''Buy American'' provision, states that for Recovery Act funds used for a project for the construction, alteration, maintenance, or repair of a public building or public work, all of the iron, steel, and manufactured goods used in the project must be produced in the United States.

Section 1605(b) of the Recovery Act provides certain exceptions to the Buy American requirement. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that the Secretary has determined that certain exceptions to the Buy American requirement are applicable to work using CFRFC grant funds based on findings made under section 1605(b). The exceptions determined applicable, without the necessity of a grantee to seek an individual exception determination, are as follows:

1. If another Federal agency (e.g., Department of Commerce, Department of Energy or Environmental Protection Agency) has determined that an exception to the Buy American requirement is applicable under section 1605(b), for a project including public housing, HUD will accept that agency's determination and permit the public housing agency (PHA) (HUD program grantee) to apply that exception for the remainder of HUD-assisted work in that project.

2. If another HUD Program Office (e.g., Office of Community Planning and Development) has determined that an exception to the Buy American requirement is applicable under section 1605(b) for a project, and an analysis supports its application to another request, HUD's Office of Public and Indian Housing (PIH) may accept that determination and permit the PHA to apply that exception to the remainder of the CFRFC grant work in that project.

3. Where the size of the CFRFC grant is less than $100,000 (currently the 24 CFR part 85 simplified acquisition threshold), the Buy American requirement is not applicable.

4. Where the size of a contract funded with CFRFC grant assistance is less than $100,000, regardless of the size of the PHA, the Buy American requirement is not applicable.

5. For any project substantially under contract or under way prior to acceptance of CFRFC funds, the Buy American requirement is not applicable.

In addition to these five national exceptions, there is also an existing list of nonavailable articles listed at 48 CFR 25.104(a) (FAR List). The procedures to apply if any of those articles are manufactured goods needed in the project covered by the Buy American requirement are found at 48 CFR 25.103(b)(1). *See* also 2 CFR 176.80.

Additional information about these exceptions has been provided in the PIH Buy American Implementation Guidance, which can be found on HUD's Web site at: *http://www.hud.gov/offices/pih/publications/notices/*.

HUD's foremost expectation is that PHAs will use American iron, steel, and manufactured goods throughout their Recovery Act assisted projects. However, there are certain circumstances under which exceptions to the Buy American requirement will be appropriate in accordance with section 1605(b). The legislative history and Congressional intent expressed in the record for the Recovery Act make clear that the priority of Congress is to provide capital funding to projects as quickly as possible to create jobs, assist those most impacted by the recession and stabilize state and local government budgets. Further evidence of the urgency and the overarching Congressional directives in providing this assistance for CFRFC programs are the specific requirements that the funding is for: (1) Priority investments; (2) priority capital projects that can be awarded contracts based on bids within 120 days from the date the funds are made available to the PHAs (i.e., July 18, 2009, for Capital Fund Recovery Formula (CFRF) grant funds); and (3) PHA priority capital projects that are already underway or included in the 5-year capital fund plans required by the section 5A of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437c–1). The national exceptions to the Buy American requirement determined applicable to CFRFC grants funds are all supportive and essential to carrying out these Congressional mandates and balanced with the interests and intent of the Buy American requirement.

The Recovery Act has also imposed obligation and expenditure of funds requirements that are stricter than the 1937 Act requirements, which generally provide PHAs two years to obligate grant funds and four years to expend those funds. Specifically, the Recovery Act requires PHAs to obligate 100 percent of CFRF grant funds by March 17, 2010. All unobligated funds will be unilaterally recaptured. PHAs must expend at least 60 percent of the grant by March 17, 2011, and if less than 60 percent is expended, all unexpended funds will be unilaterally recaptured. PHAs must expend 100 percent of the grant by March 17, 2012, or all unexpended funds will be unilaterally recaptured. Extension of the obligation and expenditure deadlines are not permitted under the Recovery Act.

These strict obligation and expenditure requirements demonstrate the financial and construction expediency requirements that the PHAs must meet along with the additional requirement of Buy American and the need for transparency.

The five exception determinations listed above are based on a determination of inconsistency with public interest. The FAR List is based insufficient and not reasonably available quantities and of a satisfactory quality. At this time, HUD is not adding to the FAR List or creating a HUD list. HUD does not need to provide any additional justification for use of items currently on the FAR List of domestically nonavailable items at 48 CFR 25.104(a). If a PHA wants to use items on the FAR List or to have items added to the FAR List or to a HUD list, the PHA must follow the PIH Buy American Implementation Guidance.

The five national exceptions determined applicable are based on public interest are necessary to: (1) Avoid delay in completion and restoration of housing for low-income families and the achievement of the Recovery Act deadlines; (2) avoid delays in the start of construction and modernization of public housing that will jeopardize jobs; (3) avoid the possibility of additional funding gaps on termination of certain contracts and price differentials cause by reprocurement of goods and equipment; (4) avoid loss of funding for critical projects; and (5) address current and emerging situations presented by PHAs. The national exception for PHAs where the size of the CFRFC grant is less than $100,000 will cover 30 percent of the PHAs (often referred to as ''small PHAs'') and will amount to a relatively small impact (approximately $52 million of the nearly $4 billion in grant awards). A determination was made that an exception is also applicable to PHAs where the size of a contract funded with CFRFC grant assistance is less than $100,000 (which is currently the 24 CFR part 85 simplified acquisition threshold fixed at 41 U.S.C. 403(11)) in part because under 24 CFR 85.36(d)(1), these are small purchase procedures that are relatively simple and informal procurement methods for securing goods. If small purchase procedures are used by a PHA, price or rate quotations are to be obtained from at least three qualified sources.

PHAs have brought to HUD's attention that every public housing development and modernization project involves the use of literally thousands of miscellaneous, generally low-cost components that are essential for but incidental to the construction and modernization, and are incorporated into the physical structure of the project, such as nails, hinges, other hardware, electrical, plumbing and finishing components. These incidental components are subject to the Buy American requirement, but unlike major components, the country of manufacture and the availability of alternatives are not readily or reasonably identifiable prior to procurement in the normal course of construction and modernization of public housing. Over 2,300 PHAs have less than 250 units in inventory, and many of these PHAs are located in rural areas or small towns. HUD understands that these PHAs in particular often have to search further in order to procure American-made items and find contractors familiar with the Buy American requirement. For these PHAs, it takes additional time to procure, and there are increased costs associated with bringing materials and contractors in from a great distance. Under the requirements of the Recovery Act, HUD is concerned that it could be disproportionate to the costs and time involved for the PHA or their contractor and would not be feasible for PHAs to find alternatives. In an effort to address this concern, HUD sought to identify the scope of these incidental components within the construction and modernization of public housing, consulted with PHAs and PHA trade associations and considered the number of ways and the number of sources of these components.

Recognition of the lack of availability and access to resources as well as relief from administrative burdens are critical to the success of small PHAs and consistent with Recovery Act objectives. As with any new requirement, implementation of the Buy American requirement will take analysis and resources that are not readily available to small PHAs. The need for the expeditious and efficient use of the CFRFC funds balanced with the long established recognition of decreased availability of resources available to small PHAs clearly supports exceptions 3 and 4 above.

Based on the information resulting from this process, the determination was made that these exceptions were appropriate because compliance with the Buy American requirement would be disproportionate to the cost and time involved for PHAs and delay work on critical public housing projects and the jobs associated with those projects. This public-interest justification does not reach the conclusion that the inclusion of iron, steel, and manufactured goods produced in the United States will automatically increase the cost of the overall project by more than 25 percent. Cost is a factor in all PHA procurements and must be considered in accordance with 24 CFR part 85 and the cost principles at 2 CFR part 225. Cost is in part a factor in all of HUD's public interest national exceptions. HUD has decided that cost-based exceptions must be determined on a case-by-case basis and submitted to HUD for review under the PIH's Buy American Implementation Guidance.

For additional information *see http://www.hud.gov/offices/pih/publications/notices/*.

Dated: September 4, 2009.

**Sandra B. Henriquez,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. E9–21958 Filed 9–10–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Request for Comments on the Strategic Plan Framework as Input for Revision and Updating of the Departmental Strategic Plan

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** The Department of the Interior is seeking public comment as part of its process to revise and update its current strategic plan.

**DATES:** You must submit comments on or before November 10, 2009.

**ADDRESSES:** You may submit comments by any of the following methods:

*E-mail: StratPlancomments@ios.doi.gov.*

*FAX:* 202–208–2619.

*Mail:* U.S. Department of the Interior, Office of the Secretary—Planning and Performance Management, Attention: DOI Strategic Planning Coordinator, 1849 C Street, NW., Mail Stop 5258, Washington, DC 20240–0001.

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made public under certain circumstances. 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.

**FOR FURTHER INFORMATION CONTACT:** LeRon E. Bielak, DOI Strategic Planning Coordinator at (202) 208–5340 or by e-mail at *leron_bielak@ios.doi.gov.*

**SUPPLEMENTARY INFORMATION:** The Government Performance and Results Act of 1993 (GPRA) requires periodic updating of agency strategic plans. The first Interior GPRA Strategic Plan was published in 1997. Subsequent revisions were published in 2000, 2003 and 2006. In producing the plan published in 2003, Interior took a major departure from its past approaches to GPRA planning. In 2003, Interior reversed an approach of publishing separate strategic plans for each bureau by developing its first unified, Department-wide strategic plan.

The 2003 plan formulated common goals and performance measures among bureaus and placed a greater emphasis on specific results to be achieved. In creating this integrated plan, Interior employed a model in which it committed to outcome goals to be achieved and a supporting set of strategies for helping achieve the desired outcomes. Both outcome goals and strategies have been accompanied by specific performance measures that indicate the progress toward the intended results.

The integrated Departmental plan approach specifies long-term quantitative targets for results to be achieved while annual performance expectations are laid out in Interior's annual Performance Budget. Bureaus and offices are also expected to integrate operational plans into their budgets that link and align directly with the Departmental strategic plan. The operational plans are also used to help confirm the relevance and cost of work conducted and to guide future budget formulation, justifications, and decision making.

The process for revising and updating our plan has been time-intensive as adequate time must be allocated for soliciting and analyzing public comment, providing for consultations and meetings to generate extended conversations about the nature and content of the plan, and progressing through a careful evaluation and approval process prior to publication.

This revision process has been complicated by the transition to a new Administration and the need for new Departmental senior leadership to be appointed and confirmed. Because of the duration of the transition process, and the need to avoid pre-empting decisions that fall to new leadership, preliminary revision work was restricted to analysis of existing performance metrics, identifying potential gaps or problems in program coverage in the plan, narrative and statistical updates, and preparation of initial options papers and schedules.

Interior Secretary Salazar considers it important to proceed with the revision process and obtain public input that will be instrumental in helping establish a plan that will focus more clearly on areas of critical concern. Secretary Salazar also views this revision as a timely opportunity to emphasize important priorities and commitments of the Administration. Among these priorities are (1) achieving greater energy independence and promoting the development of clean alternative energy sources, (2) protecting treasured landscapes, (3) addressing the issue of global climate change, (4) meeting our commitments to Native Americans and Alaska Natives, (5) addressing critical water issues, (6) creating opportunities for youth in the outdoors, and (7) insuring the integrity of science in support of Interior's decision making.

This is your invitation to present your views on the framework of missions, strategic goals, and performance measures the Department considers for revision and updating of its strategic plan. These include significant structural changes and priorities that are being proposed by the Secretary as well as your views on how to better define the results the Department should achieve and how to effectively measure our progress toward those outcomes. Input will not be sought on specific performance measure targets (also known as performance goals).

There are also several problematic areas for which your ideas are specifically being solicited: (1) Establishing a specific strategic plan goal and performance measure(s) for Indian Self-Government and Self-Determination and for Indian economic development; (2) addressing areas where the Department wants to improve existing measures, particularly metrics relating to wildland fire and endangered species conservation; (3) developing measures for gauging the effectiveness of scientific research; and (4) addressing performance measurement gaps that have been identified (shown with TBD in the measure charts of the proposed framework which can be found at the Interior Web site).

In addition to soliciting written comments, Interior is selecting several locations around the country where open meetings will be held within the next two months to discuss the strategic plan framework for revision of the plan. As with the written comments, input will not be sought on specific performance measure targets. At each location, one or more separate sessions will be held for the general public, stakeholders, the Tribes, or Interior employees. The probable meeting locations include Anchorage AK, Phoenix AZ, Portland OR, and Washington, DC. Additional Tribal meetings are likely to occur in Minneapolis, MN and Oklahoma City, OK. An additional public stakeholder and employee meeting site may be Denver, CO. Please monitor the **Federal Register** or the Department of the Interior Web site *http://www.doi.gov/strategicplan* for final details in the near future. We also intend to offer an on-line conferencing opportunity for those who cannot attend one of these meetings. Other on-line opportunities are being explored to expand the opportunities for discussion.

There is no prescribed format for submitting written comments, however, it would be very helpful to separate your comments into those that apply to mission, goals, and performance measures versus those that apply to any other plan content *(as described in items #3–5 below).* An optional format for submitting your comments is available on line at the Interior Web site, (*http://www.doi.gov/strategicplan*) as well as other viewable or downloadable files of the proposed framework, the current plan, reference documents such as the GPRA, frequently asked questions and other helpful information. *(These are also available through the contact point listed earlier.)* Comments that may refer to funding, legislation, procedural issues, or other questions more peripheral to the planning effort will receive separate consideration and may not be directly factored into the revised plan.

Although the format for an agency strategic plan is discretionary, you should know that GPRA requires that the following content be included in any such final plan:

(1) A comprehensive mission statement,

(2) Goals and objectives for major functions,

(3) Means and strategies for meeting goals,

(4) Key factors that could affect results achieved, and

(5) A listing of program evaluations used in revising the plan.

GPRA also requires that an Agency consult with Congress and obtain the views of affected and interested parties.

Dated: September 8, 2009.

**Rhea Suh,**

*Assistant Secretary—Policy, Management and Budget.*

[FR Doc. E9–21930 Filed 9–10–09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LL91310000EI]**

### Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Leasing of National System of Public Lands for Geothermal Resource Development in the Haiwee Geothermal Leasing Area Located in Inyo County, CA and To Amend the California Desert Conservation Area Plan of 1980

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1976 (NEPA), as amended, and section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Ridgecrest Field Office intends to prepare an Environmental Impact Statement (EIS) to analyze the proposed leasing of approximately 22,060 acres of BLM-managed public lands for geothermal exploration, development, and utilization in the Haiwee Geothermal Leasing Area located in Inyo County, California. The leasing of public lands for geothermal resources will require an amendment to the California Desert Conservation Area (CDCA) Plan of 1980. Comments are being solicited to help identify significant issues or concerns related to the proposed action, determine the scope of issues, and identify and refine alternatives to the proposed action. The BLM will also use and coordinate the NEPA commenting process to satisfy the requirements for public involvement in section 106 of the National Historic Preservation Act.

**DATES:** This Notice initiates the public scoping process for the EIS and plan amendment. Comments on issues may be submitted in writing until October 13, 2009. The date(s) and location(s) of the public scoping meetings will be announced at least 15 days in advance through local news media, newspapers and the BLM Web site at: *http://www.blm.gov/ca/st/en.html*. In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

**ADDRESSES:** You may submit comments related to Geothermal Leasing in the Haiwee Geothermal Leasing Area located in Inyo County, California by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en.html.*
- *E-mail: John_Dalton@ca.blm.gov.*
- *Fax:* (951) 697–5299.
- *Mail:* Bureau of Land Management, California Desert District Office, Attn: John Dalton, Haiwee Geothermal Leasing Area Coordinator, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553.

**FOR FURTHER INFORMATION CONTACT:** John Dalton at (951) 697–5311, *John_Dalton@ca.blm.gov.*

**SUPPLEMENTARY INFORMATION:** The BLM has received three noncompetitive geothermal lease applications for 4,460 acres of public land within the Haiwee Geothermal Leasing Area in Inyo County, California. In addition, the BLM identified approximately 17,600 acres of public lands, also within the Haiwee Geothermal Leasing Area and adjacent to the three geothermal lease applications, which will be considered for competitive geothermal leasing under 43 CFR 3203.10(e). The proposed action is to amend the CDCA Plan to allocate project area lands as open or closed to consideration for geothermal leasing, with appropriate stipulations necessary to maintain and protect other resource values and uses, and to develop a Reasonably Foreseeable Development Scenario for geothermal resources development under the authority of the FLPMA and the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*). Individual lease issuance decisions and parcels to be included in a sale will be considered in a manner consistent with the final plan as amended, as subsequent implementation decisions. The public lands being considered for geothermal leasing in the Haiwee Geothermal Leasing Area are located in sections 11–14, 23–26, 35, and 36 in Township 21 South, Range 37 East, sections 7–10, 15, 17–22, 27–34 in Township 21 South, Range 38 East, in sections 1 and 2 in Township 22 South, Range 37 East, and sections 5–8 in Township 22 South, Range 38 East, all within the San Bernardino and Base Meridian. Total acreage being considered for geothermal leasing is approximately 22,060 acres.

Alternatives thus far identified for evaluation in the EIS will include the following:

1. Proposed action.
2. No action alternative (not leasing the lands for geothermal exploration, development, and utilization).
3. Leasing fewer than the proposed 22,060 acres of public land.

The principal issues identified thus far for consideration in the EIS include Native American concerns; potential land use conflicts including recreation; cumulative impacts considering existing, proposed, and potential geothermal projects in the area; and potential impacts on cultural resources, wildlife, visual resources, and surface and groundwater resources. The EIS will also address other issues such as geology, mining, geothermal resources, vegetation, threatened or endangered species, air quality, noise, transportation, human health and safety, and social and economic issues, as well as any issues raised during the scoping process.

The BLM will identify issues to be addressed in the Plan, and will place them into one of three categories:

1. Issues to be resolved in the plan.
2. Issues to be resolved through policy or administrative action.
3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the plan as to why we placed an issue in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the Plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The following Planning Criteria will be utilized during production of this document:

- The plan will be completed in compliance with FLPMA, NEPA, and all other relevant Federal law, Executive Orders, and management policies of the BLM.
- Where existing planning decisions are still valid, those decisions may remain unchanged and be incorporated into the plan amendment.
- The plans will recognize valid existing rights.
- Native American Tribal consultations will be conducted in accordance with policy and Tribal concerns will be given due consideration. The planning process will include the consideration of any impacts on Indian trust assets.

• Consultation with the State Historic Preservation Officer will be conducted throughout the planning process.

• Consultation with U.S. Fish and Wildlife Service will be conducted throughout the planning process, as necessary.

By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans, predicated on the findings of the EIS. The BLM will utilize and coordinate the NEPA commenting process to satisfy the public involvement process for section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, as well as individuals, organizations, or tribes that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

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.

**Jack Hamby,**

*Acting District Manager.*

[FR Doc. E9–21928 Filed 9–10–09; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVC0100000.L91310000.EJ0000. LXSIGEOT0000; MO4500008734; NVN 087795; 09–08807; TAS: 14X5575]**

### Notice of Intent To Prepare an Environmental Impact Statement for the Salt Wells Energy Projects, Churchill County, NE

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** The Bureau of Land Management (BLM) Stillwater Field Office, Carson City, Nevada, intends to prepare an Environmental Impact Statement (EIS) for the Salt Wells Energy Projects proposed by Sierra Pacific Power Company (Sierra), Ormat Technologies, Inc. (Ormat), and Vulcan Power Company (Vulcan) that are located in Churchill County, Nevada. Three separate projects are proposed that could result in seven 30–60 megawatt (MW) geothermal power plants with 47 associated wells, pipelines and other facilities near Fallon, Nevada, and a 22-mile, fifty-foot-wide Right-of-Way (ROW) for a new transmission line with substations to support the existing and new Fallon geothermal power plants. The study area encompassed by the three projects together covers approximately 537 total acres. This notice announces the beginning of the scoping process and solicits input on the identification of issues.

**DATES:** The public scoping period will close November 10, 2009. Any public meetings associated with the public scoping will be announced through the local news media and the BLM Web site: *www.blm.gov/nv/st/en/fo/carson_city_field.html* at least 15 days prior to each event. Additional formal opportunities for public participation in the EIS process will be provided through comment upon publication of the draft document.

**ADDRESSES:** Written comments may be submitted by any of the following methods:

• *Mail:* BLM Stillwater Field Office, Attn: Salt Wells Energy Projects, 5665 Morgan Mill Road, Carson City, NV 89701.

• *Fax:* (775) 885–6147.

• *E-mail: saltwells_eis@blm.gov.*

Documents pertinent to this proposal may be examined at the Carson City District Office, 5665 Morgan Mill Road, Carson City, NV.

**FOR FURTHER INFORMATION CONTACT:** Desna Young (775) 885–6078; or e-mail *saltwells_eis@blm.gov.*

**SUPPLEMENTARY INFORMATION:** The BLM Stillwater Field Office received separate proposed geothermal utilization plans and applications for facilities construction permits from Ormat and Vulcan, and an electric transmission right-of-way (ROW) application from Sierra, for proposed energy projects covering a combined area of approximately 537 acres in the Salt Wells area about 15 miles east of Fallon, Nevada. Vulcan proposes the development of up to six geothermal power plants and facilities. Ormat proposes the development of one geothermal power plant and associated facilities. Sierra proposes 22 miles of above-ground electrical transmission lines, electrical substations, and switching facilities. The BLM determined that because of similar timing, geographic area, and type of action, the BLM will analyze the three proposals in one EIS. The BLM will issue a separate record of decision at the end of the process for each proposed project. The BLM will use information from this scoping process with the utilization plans and ROW proposals to facilitate public involvement and to identify the alternatives to be studied. All lands within the project area are already under lease. The proposed facilities would be sited on a combination of private property and public land managed by the BLM and the U.S. Bureau of Reclamation (BOR). Several proposed well sites are located on Federal geothermal leases in the Carson Lake and Pasture area, currently open to leasing and managed by the BOR, although these lands have been proposed to be transferred to the Nevada State Department of Wildlife. These activities are consistent with the applicable 2001 Carson City Consolidated Resource Management Plan as amended by the 2008 Record of Decision and Resource Management Plan Amendments for Geothermal Resource Leasing in the Western United States. The Fallon Naval Air Station is adjacent to the leased areas in Salt Wells. The Navy has concerns both related to its own geothermal resource program and also related to preserving its airspace for training, and community encroachment issues. The Ormat project proposal includes the construction and operation of a 40 MW binary air-cooled geothermal power plant, 20 geothermal production and injections wells, pipelines, a substation, connection lines to the proposed Sierra transmission line, and access roads on approximately 90 acres of land. BLM has already completed a July 2008 Environmental Assessment in the Ormat Carson Lake Geothermal Exploration Project EA (EA–NV–030–07–006) and has approved 11 of the wells estimated to be necessary for Ormat's project. The Vulcan project proposal is to construct up to six 30–60 MW binary or double-flash geothermal power plants and associated facilities on approximately 160 acres of land, which could require an estimated 27 geothermal production and injection wells. Each site includes production and injection wells, pipelines, a substation, connection lines to the proposed Sierra transmission line, and access roads. Twenty of these wells have already been approved via two Environmental Assessments for ten

wells each in the Salt Wells Geothermal Drilling EA, EA–NV–030–07–05 of February 2007, and in the Salt Wells Geothermal Drilling Program EA, DOI–BLM–NV–C010–2009–0006–EA of April 2009. The Sierra fifty-foot-wide ROW proposal covers approximately 287 acres and includes construction of a new substation, 22 miles of single-circuit 230 kV transmission line, four 230 kV switching stations, and two 60 kV transmission lines connecting the proposed new substation to the existing Fallon substation.

The EIS will analyze the direct, indirect, and cumulative impacts of the three proposed projects, alternatives, and a no action alternative. The EIS will also identify specific mitigation. The EIS will address issues brought forth through scoping and will be evaluated by an interdisciplinary team of specialists. This EIS is also intended to cover the impacts of operation of the plants and facilities, and thus should be able to support issuance of the site license required under 43 CFR subpart 3273 as well as remaining drilling approvals under 43 CFR subpart 3261, and the utilization plans and facility construction permits under 43 CFR subpart 3272. Key issues likely to be considered in analyzing each proposal and alternatives include: Water resources (including surface and ground water quality, floodplains, wetlands and riparian areas); geology and minerals; air quality; soils; vegetation; wildlife and wildlife habitat (especially related to migratory shorebirds utilizing Carson Lake to the west of the project area); special-status species; range resources; land use and access; recreation; aesthetics (noise and visual; especially in areas of high cultural sensitivity such as the Grimes Point Archeological Site to the north and the Pony Express Trail to the south of the project area); social and economic values; cultural resources; Native American religious concerns (consultation with the Fallon Paiute-Shoshone Tribe has been ongoing to avoid cultural sites that have been identified by the tribe); hazardous materials; and noxious weeds. Native American tribal consultations will be conducted in accordance with policy. Evaluation of cumulative impacts will take into consideration the recently-constructed Enel North America geothermal power plant adjacent to the project area to the south.

Federal, state, and local agencies and other entities that may be affected by the decisions to be made on the proposed projects are invited to participate in the scoping process and, if eligible, may request, or be requested by the BLM, to participate as a cooperating agency. Written comments may be provided to the BLM at public scoping meetings or may be submitted to the BLM using one of the methods listed in the **ADDRESSES** section. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 3200 and 43 CFR 2800).

**Teresa J. Knutson,**

*Manager, Stillwater Field Office, BLM Carson City District.*

[FR Doc. E9–21925 Filed 9–10–09; 8:45 am]

**BILLING CODE 4310–HC–P**

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

**[Docket No. MM–2008–MRM–0018]**

### Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of major portion prices for calendar year 2007.

**SUMMARY:** Final regulations for valuing gas produced from Indian leases, published August 10, 1999, require MMS to determine major portion prices and notify industry by publishing the prices in the **Federal Register**. The regulations also require MMS to publish a due date for industry to pay additional royalty based on the major portion prices. This notice provides the major portion prices for the 12 months of 2007.

**DATES:** The due date to pay additional royalties based on the major portion prices is November 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** John Barder, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3702; FAX (303) 231–3755; e-mail to *John.Barder@mms.gov*; or Mike Curry, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3741; FAX (303) 231–3755; e-mail to *Michael.Curry@mms.gov*. Mailing address: Minerals Management Service, Minerals Revenue Management, Compliance and Asset Management, Indian Oil and Gas Compliance and Asset Management, P.O. Box 25165, MS 396B2, Denver, Colorado 80225–0165.

**SUPPLEMENTARY INFORMATION:** On August 10, 1999, MMS published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases,'' (64 FR 43506) with the effective date January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The rule requires that MMS publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, along with a due date for additional royalty payments. *See* 30 CFR 206.174(a)(4)(ii) (2008). If additional royalties are due based on a published major portion price, the lessee must submit an amended Form MMS–2014, Report of Sales and Royalty Remittance, to MMS by the due date. If additional royalties are not paid by the due date, late payment interest, under 30 CFR 218.54, will accrue from the due date until payment is made and an amended Form MMS–2014 is received. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is 60 days after the publication date of this notice.

GAS MAJOR PORTION PRICES ($/MMBTU) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

| MMS-designated areas | Jan 2007 | Feb 2007 | Mar 2007 | Apr 2007 |
|---|---|---|---|---|
| Blackfeet Reservation | 5.96 | 5.86 | 6.39 | 6.11 |
| Fort Belknap | 6.01 | 6.42 | 6.24 | 6.17 |
| Fort Berthold | 5.93 | 7.35 | 6.16 | 6.66 |
| Fort Peck Reservation | 6.64 | 8.92 | 9.47 | 9.19 |
| Navajo Allotted Leases in the Navajo Reservation | 5.87 | 6.84 | 6.77 | 6.20 |
| Rocky Boys Reservation | 4.87 | 5.38 | 5.30 | 5.22 |
| Ute Allotted Leases in the Uintah and Ouray Reservation* | 3.98 | 6.29 | 6.33 | 3.72 |

GAS MAJOR PORTION PRICES ($/MMBTU) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE—Continued

| MMS-designated areas | Jan 2007 | Feb 2007 | Mar 2007 | Apr 2007 |
|---|---|---|---|---|
| Ute Tribal Leases in the Uintah and Ouray Reservation | 3.39 | 5.83 | 5.76 | 2.80 |
| MMS-designated areas | May 2007 | Jun 2007 | Jul 2007 | Aug 2007 |
| Blackfeet Reservation | 6.44 | 6.23 | 5.81 | 4.74 |
| Fort Belknap | 6.22 | 6.28 | 5.97 | 5.96 |
| Fort Berthold | 6.81 | 6.47 | 5.51 | 5.48 |
| Fort Peck Reservation | 7.28 | 7.12 | 6.48 | 7.12 |
| Navajo Allotted Leases in the Navajo Reservation | 6.69 | 6.81 | 6.03 | 5.49 |
| Rocky Boys Reservation | 5.35 | 4.92 | 4.12 | 3.76 |
| Ute Tribal Leases in the Uintah and Ouray Reservation | 4.32 | 2.63 | 2.89 | 2.62 |
| MMS-designated Areas | Sep 2007 | Oct 2007 | Nov 2007 | Dec 2007 |
| Blackfeet Reservation | 4.48 | 4.99 | 5.70 | 6.30 |
| Fort Belknap | 5.83 | 5.84 | 6.00 | 6.27 |
| Fort Berthold | 5.94 | 6.64 | 7.07 | 6.75 |
| Fort Peck Reservation | 6.74 | 7.69 | 8.80 | 9.85 |
| Navajo Allotted Leases in the Navajo Reservation | 4.88 | 5.59 | 6.18 | 6.79 |
| Rocky Boys Reservation | 3.89 | 4.90 | 5.22 | 5.13 |
| Ute Tribal Leases in the Uintah and Ouray Reservation | 1.87 | 1.17 | 3.43 | 5.59 |

*As stated in the **Federal Register** notice published March 8, 2007, effective May 1, 2007 (72 FR 10552), MMS will value the Indian allotted leases in the Uintah and Ouray Reservation based on the Central Rocky Mountain index zone price.

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on the MMS Web site at *http://www.mrm.mms.gov/ReportingServices/PDFDocs/991201.pdf*.

Dated: July 10, 2009.

**Jennifer L. Goldblatt,**

*Acting Associate Director for Minerals Revenue Management.*

[FR Doc. E9–21911 Filed 9–10–09; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNV9330000.L14300000.ET0000; NVN50818; 09–08807; TAS: 14X1109]**

### Austin Administrative Site: Proposed Withdrawal Extension and Opportunity for Public Meeting, Lander County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Secretary of the Interior proposes to extend a withdrawal established by Public Land Order (PLO) No. 6760 for an additional 20 years. PLO No. 6760 withdrew 30 acres of National Forest System land from location under the mining laws to protect the Austin Administrative Site in Lander County, Nevada. The lands will remain open to the mineral leasing laws. This notice gives an opportunity to comment on the proposed action and to request a public meeting.

**DATES:** Comments and requests for a public meeting must be received by December 10, 2009.

**ADDRESSES:** Comments and meeting requests may be mailed to the Field Manager, BLM Tonopah Field Office, Attn: NVN–50818, P.O. Box 911, Tonopah, NV 89049.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline M. Gratton, 775–861–6532.

**SUPPLEMENTARY INFORMATION:** The United States Forest Service filed an application with the Bureau of Land Management (BLM) requesting the extension of PLO No. 6760 which was published in the **Federal Register** in 1989 (54 FR 53612). The withdrawal will expire on December 28, 2009, unless extended.

The purpose of the proposed extension is to continue the protection of the Federal investment in the Austin Administrative Site. There are no suitable alternative sites as the land described contains permanent Federal facilities. Structures and improvements on the site include the Austin Ranger District offices, family housing for permanent and temporary employees, trailer sites with utilities, visitor and employee vehicle parking areas, a warehouse and horse corrals. The use of a right-of-way, interagency, or cooperative agreement would not provide adequate protection of the Federal investment.

Comments, including names and street addresses of respondents, and records relating to the application will be available for public review at the Tonopah Field Office, 1553 S. Main Street in Tonopah, Nevada, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. 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 the public review, we cannot guarantee that we will be able to do so.

This application will be processed in accordance with regulations set forth in 43 CFR Part 2300. On determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and local newspapers at least 30 days before the scheduled date of the meeting.

(Authority: 43 CFR 2310.3–1)

**Michael R. Holbert,**

*Deputy State Director, Resources, Lands and Planning.*

[FR Doc. E9–21926 Filed 9–10–09; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–963–1410–ET; AA–12484]**

### Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Department of Agriculture (USDA), Forest Service has filed an application with the Bureau of Land Management that proposes to extend the duration of Public Land Order (PLO) No. 6965 for an additional 20-year period. This order withdrew approximately 685 acres of National Forest System land from settlement, sale, location, or entry under the general land laws, including the United States mining laws, (30 U.S.C. Ch. 2 (2006)), to protect a research natural area. This notice gives an opportunity to comment on the proposed action and to request a public meeting.

**DATES:** Comments and requests for a public meeting must be received by December 10, 2009.

**ADDRESSES:** Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7504.

**FOR FURTHER INFORMATION CONTACT:** Ramona Chinn, BLM Alaska State Office, 907–271–3806 or at the address above.

**SUPPLEMENTARY INFORMATION:** The withdrawal created by PLO No. 6965 (58 FR 19612, April 15, 1993), will expire on April 14, 2013, unless extended. The USDA Forest Service has filed an application to extend the withdrawal for an additional 20-year period to protect the natural ecological complex of the USDA Forest Service Natural Area.

This withdrawal comprises approximately 685 acres of National Forest System land located within:

**Copper River Meridian**

T. 79 S., R. 94 E.,
Secs. 30 and 31,
T. 79 S., R. 93 E.,
Secs. 25 and 36, as described in PLO No. 6965 (58 FR 19612, April 15, 1993).

A complete description, along with all other records pertaining to the extension application, can be examined in the BLM Alaska State Office at the address shown above.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of land under lease, license, or permit or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not adequately protect the Federal interest in the Dog Island Research Natural Area.

There are no suitable alternative sites available that could be substituted for the above described public land, since the Dog Island Research Natural Area is unique.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Alaska State Director at the address indicated above. 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. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Alaska State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4 and subject to Section 810 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120 (2006).

(Authority: 43 CFR 2310.3–1(b))

**Ramona Chinn,**

*Deputy State Director, Division of Alaska Lands.*

[FR Doc. E9–21927 Filed 9–10–09; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNV056000.L58530000.EU0000; N–81926 *et al;* 9–08807; TAS: 14X5232]**

### Notice of Realty Action: Competitive Online Auction of Public Lands in Clark County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** Pursuant to the Southern Nevada Public Land Management Act of 1998 (SNPLMA), Public Law 105–263, as amended, the Bureau of Land Management (BLM) proposes to offer 14 parcels of public land totaling approximately 35 acres in the Las Vegas Valley by competitive online auction at not less than the fair market value (FMV). The online sale will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 and 1719, respectively, and BLM land sale and mineral conveyance regulations at 43 CFR 2710 and 2720.

**DATES:** Interested parties may submit written comments regarding the proposed sale of public lands and the environmental assessment (EA) until October 26, 2009. The sale by competitive online auction, conducted by U.S. General Services Administration (GSA), will begin on November 18, 2009 and will remain open for bid for a period of 30 days.

**ADDRESSES:** Mail written comments to the BLM District Manager, Southern Nevada District Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

**FOR FURTHER INFORMATION CONTACT:** Manuela Johnson at *manuela_johnson@nv.blm.gov* or (702) 515–5224. For general information on previous BLM public land sales, go to: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html.* Bidders may register on the GSA Web site at *http://www.auctionrp.com/.*

**SUPPLEMENTARY INFORMATION:** The proposed SNPLMA sale parcels were analyzed in the Las Vegas Valley Disposal Boundary Environmental Impact Statement (EIS), approved December 23, 2004. One sale parcel, N–86661, is analyzed in EA number DOI–BLM–NV–S010–2009–0167–EA for this sale which tiers to the EIS. On publication of this notice, this EA is available for public review and comment. Thirteen parcels being offered in this sale were previously analyzed through EAs and approved for sale. Copies of the EAs for N–81926, N–81927, N–78190, N–80730, N–81930 through N–81938 are available at the BLM Las Vegas Field Office (LVFO) located at the address above.

This public sale is in conformance with the BLM Las Vegas Resource Management Plan (RMP), approved on October 5, 1998. The BLM has determined that the proposed action conforms to the RMP decision LD–1 under the authority of the FLPMA.

**Mount Diablo Meridian, Nevada,**

T. 22 S., R. 60 E.,
sec. 12, SE¼SE¼NE¼SE¼;
sec. 14, NW¼SW¼NW¼SW¼;
sec. 16, SE¼NE¼SE¼SE¼,
SW¼NE¼SE¼SE¼,
SE¼NW¼SE¼SE¼,
NE¼SE¼SE¼SE¼,
NW¼SE¼SE¼SE¼,
SW¼SE¼SE¼SE¼,
SE¼SE¼SE¼SE¼,
NE¼SW¼SE¼SE¼,
NW¼SW¼SE¼SE¼,
SW¼SW¼SE¼SE¼, and
SE¼SW¼SE¼SE¼.
T. 22 S., R. 61 E.,
sec. 33, SW¼NW¼SW¼NE¼.
The area described contains 35 acres, more or less, in Clark County.

Maps delineating the individual proposed sale parcels are available for public review at *https://www.propertydisposal.gsa.gov,* and at the BLM Las Vegas Field Office (LVFO), which is located at the BLM Southern Nevada District Office (address above). The FMV for each parcel will be available 60 days prior to the sale date.

The lands are being offered for sale online via the Internet using competitive sale procedures pursuant to 43 CFR 2711.3–1. Bidding on the subject parcels will begin at FMV and remain open for sale for a period of 30 days in accordance with the competitive sale procedures.

Bidders must register online at *http://www.auctionrp.com/* and create a user identification and password. Registration may occur any time prior to the conclusion of the auction. All bidders must go to the GSA Web site to obtain the Certificate of Eligibility form, Bidder Registration form, and Bid form for Purchase of Government Property. Bidders must complete and mail these documents to GSA at the address listed on the Bidder Registration form. Bidders may also obtain maps and get information on how to submit competitive online bids for the sale. GSA will notify bidder(s) when they are allowed to bid online. The online auction site is updated immediately when new bids are received. A submitted online Internet bid is a binding offer. The date for receipt of final bids will be announced on the Internet at *http://www.auctionrp.com.*

At the conclusion of the auction, the highest qualified bid for any parcel will be declared the apparent high bidder under 43 CFR 2711.3–1(d). The declared high bidder will have 10 days from closure of the online auction to submit a bid deposit of not less than 20 percent of the successful high bid amount. Payment must be made in the form of a cashier's check, certified check or U.S. postal money order, and made payable in U.S. dollars to ''Department of the Interior—Bureau of Land Management.'' Personal or company checks will not be accepted. Failure to submit the 20 percent bid deposit amount within the 10 days will result in cancellation of the bid. On receipt of the 20 percent bid deposit within the 10 days, the BLM will send the successful bidder(s) a high bidder letter with detailed information for full payment.

Federal law requires that bidders must be (1) United States citizens 18 years of age or older; (2) a corporation subject to the laws of any State or of the United States; (3) an entity including, but not limited to associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Nevada; or (4) a State, State instrumentality, or political subdivision authorized to hold real property. U.S. citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents to BLM within 30 days from receipt of the high bidder letter shall result in cancellation of the sale and forfeiture of the bid deposit.

Within 30 days of the sale, BLM will, in writing, either accept or reject all bids received. No contractual, or other rights against the United States, may accrue until BLM officially accepts the offer to purchase and the full bid price is paid. Terms and Conditions: Certain minerals for each parcel will be reserved in accordance with the BLM's approved Mineral Potential Report, dated January 22, 1999. Information pertaining to the reservation of minerals specific to the parcel is located in the case file and available for review at the LVFO (address above). An offer to purchase these parcels will constitute an application for mineral conveyance of the ''no known value'' mineral interests. In conjunction with the final payment, an applicant for ''no known value'' mineral interests will be required to pay a $50 non-refundable filing fee for processing the conveyance of the ''no known value'' mineral interests which will be sold simultaneously with the surface interests.

The following numbered terms and conditions will appear on the conveyance documents for these parcels:

1. Discretionary leasable and saleable mineral deposits on the lands in Clark County, if any, are reserved to the United States, in accordance with the above referenced Mineral Potential Report. Permittees, licensees, and lessees of the United States retain the right to prospect for, mine, and remove such leasable and saleable minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. All parcels are subject to valid existing rights;

4. The parcels are subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans;

5. By accepting this patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations applicable to the real property; (2) Judgments, claims or demands of any

kind assessed against the United States; (3) Costs, expenses, damages of any kind incurred by the United States; (4) Other releases or threatened releases on, into or under land, property and other interests of the United States by solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws; (5) Other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction; and

6. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of any parcel will not be on a contingency basis. However, to the extent required by law, all parcels are subject to the requirements of Section 120(h) of the CERCLA.

Parcels may be subject to land use applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of title, or the FMV of a parcel. Encumbrances of record that may appear in the BLM public files for the parcels proposed for sale are available for review during business hours, 7:30 a.m. to 4:30 p.m., Pacific Time, Monday through Friday, at the LVFO, except during Federally recognized holidays.

All parcels are subject to limitations prescribed by law and regulation, and prior to patent issuance, a holder of any right-of-way within the parcels may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable, or to an easement.

BLM will notify valid existing right-of-way holders of their ability to convert their compliant rights-of-way to perpetual rights-of-way or easements. Each valid holder will be notified in writing of their rights and then must apply for the conversion of their current authorization.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee.

Requests for all escrow instructions must be received by the LVFO prior to 30 days before the prospective patentee's scheduled closing date. There are no exceptions.

No contractual or other rights against the United States may accrue until BLM officially accepts the offer to purchase, and the full bid price is submitted by the 180th day following the sale.

All name changes and supporting documentation must be received at the LVFO 30 days from the date on the high bidder letter by 4:30p.m., Pacific Time. Name changes will not be accepted after that date. To submit a name change, the apparent high bidder must submit the name change on the Certificate of Eligibility form to the LVFO in writing. Certificate of Eligibility forms are available at the LVFO and the BLM Web site at: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html.*

The remainder of the full bid price for each parcel must be paid prior to the expiration of the 180th day following the close of the online auction. Payment must be submitted in the form of a certified check, postal money order, bank draft or cashier's check made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management.'' Personal checks will not be accepted.

Arrangements for electronic fund transfer to BLM for payment of the balance due must be made a minimum of two weeks prior to the payment date. Failure to pay the full bid price prior to the expiration of the 180th day will disqualify the apparent high bidder and cause the entire 20 percent bid deposit to be forfeited to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM cannot accept the full bid price after the 180th day of the sale date.

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of the exchange is the bidder's responsibility in accordance with Internal Revenue Services regulations. BLM is not a party to any 1031 Exchange.

All sales are made in accordance with and subject to the governing provisions of law and applicable regulations.

In accordance with 43 CFR 2711.3–1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons.

Any parcels not sold by competitive sale or through an online auction may be identified for sale at a later date without further legal notice. Unsold parcels may be offered for sale in future auctions without additional legal notice.

On publication of this notice and until completion of the sale, the BLM is no longer accepting land use applications affecting the parcels identified for sale. However, land use applications may be considered after completion of the sale for parcels that are not sold.

In order to determine the FMV, certain assumptions may have been made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Information concerning the sale, appraisals, reservations, procedures and conditions, CERCLA and other environmental documents will be available for review at the LVFO, or by calling (702) 515–5000 and asking to speak to a member of the sales team. Most of this information will also be available on the Internet at *https://www.propertydisposal.gsa.gov*.

Only written comments submitted by postal service or overnight mail will be considered properly filed. Electronic mail, facsimile or telephone comments will not be considered as properly filed.

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.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any valid adverse comments, this realty action will become the final determination of the Department of the Interior.

**Authority:** 43 CFR 2711.

**Kimber Liebhauser,**

*Assistant Field Manager, Division of Lands.*

[FR Doc. E9–21929 Filed 9–10–09; 8:45 am]

**BILLING CODE 4310–HC–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–617]**

### In the Matter of Certain Digital Televisions and Certain Products Containing Same and Methods of Using Same; Enforcement Proceeding; Notice of Institution of Formal Enforcement Proceeding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to the limited exclusion order and cease and desist orders issued at the conclusion of the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov/*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on November 15, 2007, based on a complaint filed by Funai Electric Co., Ltd. of Japan and Funai Corporation of Rutherford, New Jersey (collectively ''Funai'') against several respondents including Vizio, Inc. of Irvine, California (''Vizio''); AmTran Technology Co., Ltd. of Taiwan (''AmTran''); Syntax-Brillian Corporation of Tempe, Arizona (''SBC''); Taiwan Kolin Co., Ltd. of Taiwan (''Taiwan Kolin''); Proview International Holdings, Ltd. of Hong Kong (''Proview International''); Proview Technology (Shenzhen) Co., Ltd. of China (''Proview Shenzhen''); Proview Technology, Ltd. of Garden Grove, California (''Proview Technology''); TPV Technology, Ltd. of Hong Kong (''TPV Technology''); TPV International (USA), Inc. of Austin, Texas (''TPV USA''); Top Victory Electronics (Taiwan) Co., Ltd. of Taiwan (''Top Victory Electronics''); and Envision Peripherals, Inc. of Fremont, California (''Envision''), among others. 72 Fed. Reg. 64240 (2007). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. * 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital televisions and certain products containing same by reason of infringement of one or more claims of U.S. Patent Nos. 6,115,074 (''the '074 patent'') and 5,329,369.

On April 10, 2009, the Commission terminated this investigation with a finding of violation of Section 337 by reason of infringement of claim 1, 5, and 23 of the '074 patent. 74 FR 17511 (2009). The Commission determined that the appropriate form of relief is (1) a limited exclusion order under 19 U.S.C. * 1337(d)(1) prohibiting the unlicensed entry of certain digital televisions and certain products containing the same that infringe one or more of claims 1, 5, and 23 of the '074 patent, and are manufactured abroad by or on behalf of, or imported by or on behalf of, Vizio, AmTran, TPV Technology, TPV USA, Top Victory Electronics, Envision, Taiwan Kolin, SBC, Proview International, Proview Shenzhen, Proview Technology; and (2) cease and desist orders directed to Vizio, TPV USA, SBC, Proview Technology, and Envision.

On August 14, 2009, Funai filed a complaint seeking enforcement proceedings under Commission Rule 210.75, 19 CFR 210.75. The complaint alleges that Vizio, AmTran, TPV Technology, TPV USA, Top Victory Electronics, Envision, Proview International, Proview Shenzhen, Proview Technology, Suzhou Raken Technology Ltd. of China (''Suzhou''), and Top Victory Investments, Ltd. of Hong Kong (''Top Victory Investments'') have violated the limited exclusion order and/or the cease and desist orders issued at the conclusion of the original investigation.

Funai's enforcement complaint also requests that the Commission seek temporary emergency action under Commission rule 210.77, 19 CFR 210.77, to modify its remedial orders to make express that all respondents' ATSC-compliant digital televisions are presumed to infringe the '074 patent. The Commission has denied this request for temporary emergency action because the Commission does not have the information necessary to determine whether respondents are currently violating the Commission's limited exclusion and cease and desist orders.

Having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission rule 210.75, 19 CFR 210.75 the Commission has determined to institute a formal enforcement proceeding to determine whether the respondents are in violation of the Commission's limited exclusion order and cease and desist orders issued in the investigation, and what, if any, enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) Complainant Funai, (2) respondents Vizio, AmTran, TPV Technology, TPV USA, Top Victory Electronics, Envision, Proview International, Proview Shenzhen,

Proview Technology, Suzhou, and Top Victory Investments; and (3) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

By order of the Commission.
Issued: September 4, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–21901 Filed 9–10–09; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on August 28, 2009, a proposed Consent Decree (''Decree'') in *United States* v. *Charleswood, Inc.,* Civil Action No. 3:09–CV–00080 (RRE–KKK), was lodged with the United States District Court for the District of North Dakota, Southeastern Division. The case was brought under Section 402 of the Clean Water Act (''CWA''), 33 U.S.C. 1342, and involves the applicable permits governing discharge of storm water from the Charleswood Development in West Fargo, North Dakota.

The Consent Decree requires that Charleswood (1) achieve and maintain compliance with the CWA and its implementing regulations, including applicable permits; (2) pay a civil penalty of $37,500 to redress the company's past violations of the CWA and its implementing regulations, including applicable permits; and (3) establish a compliance and oversight program that must be implemented by the company to reduce the discharge of storm water from the Charleswood Development.

The United States filed a Complaint with the Consent Decree which alleges that Charleswood failed to comply with the conditions of two general permits issued to it under Section 402 of the Act, 33 U.S.C. 1342, relating to the Charleswood Development. The Consent Decree would resolve the claims against Charleswood as described in the Complaint. The ultimate entry of the Consent Decree by the District Court of North Dakota would end this litigation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to Civil Action No. 3:09–CV–00080 (RRE–KKK), D.J. Ref. No. 90–5–1–1–08299.

The Decree may be examined at the Office of the United States Attorney, District of North Dakota, 655 1 Ave. N., Suite 250, Fargo, North Dakota 58102. It also may be examined at the offices of U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. During the public comment period, the Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

A copy of the Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9–21907 Filed 9–10–09; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Notice of Initial Determination Updating the List of Products Requiring Federal Contractor Certification as to Forced/Indentured Child Labor Pursuant to Executive Order 13126

**AGENCY:** Bureau of International Labor Affairs, Labor.

**ACTION:** Request for comments.

**SUMMARY:** This initial determination proposes to update the list required by Executive Order No. 13126 (''Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor''), in accordance with the ''Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor.'' This notice sets forth an updated list of products, by country of origin, which the Department of Labor preliminarily believes might have been mined, produced, or manufactured by forced or indentured child labor. The Department of Labor invites public comment on its initial determination as to products that appear on the updated list set forth in this notice. The Department will consider all public comments prior to publishing a final determination updating the list of products, made in consultation and cooperation with the Department of State, and the Department of Homeland Security.

**DATES:** Information should be submitted to the Office of Child Labor, Forced Labor and Human Trafficking (OCFT) via one of the methods described below by 5 p.m., December 10, 2009.

*To Submit Information, or for Further Information, Contact:* OCFT, Bureau of International Labor Affairs, U.S. Department of Labor at (202) 693–4843 (this is not a toll free number). Comments, identified as ''Docket No. DOL–2009–0002,'' may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The portal includes instructions for submitting comments. Parties submitting responses electronically are encouraged not to submit paper copies.
- *Facsimile (fax):* OCFT at 202–693–4830.
- *Mail, Express Delivery, Hand Delivery, and Messenger Service (2 copies):* Charita Castro or Rachel Rigby at U.S. Department of Labor, OCFT, Bureau of International Labor Affairs, 200 Constitution Avenue, NW., Room S–5317, Washington, DC 20210.
- *E-mail: EO13126@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Executive Order No. 13126 (EO 13126), which was published in the **Federal Register** on June 16, 1999 (64 FR 32383), declared that it was ''the policy of the United States Government * * * that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of good, wares, articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor.'' Pursuant to the EO 13126, and following public notice and comment, the Department of Labor published in the January 18, 2001, **Federal Register**, a

final list of products (the ''List''), identified by their country of origin, that the Department, in consultation and cooperation with the Departments of State and Treasury [relevant responsibilities now within the Department of Homeland Security], had a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor (66 FR 5353). In addition to the List, the Department also published on January 18, 2001, ''Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor'' (Procedural Guidelines), which provide for maintaining, reviewing, and, as appropriate, revising the List (66 FR 5351). The current List and the Procedural Guidelines can be accessed on the Internet at *http://www.dol.gov/ILAB/regs/eo13126/main.htm* or can be obtained from: OCFT, Bureau of International Labor Affairs, Room S–5317, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–4843; fax (202) 693–4830.

Pursuant to Section 3 of the Executive Order, the Federal Acquisition Regulatory Councils published a final rule in the **Federal Register** on January 18, 2001, providing, amongst other requirements, that Federal contractors who supply products that appear on the List issued by the Department of Labor must certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. *See* 48 CFR Subpart 22.15.

## II. Update to EO 13126 List

Pursuant to Sections D through G of the Procedural Guidelines, the EO 13126 List may be updated through considerations of submissions by individuals or through OCFT's own initiative. When updating the List on its own initiative, the Department of Labor must publish in the **Federal Register** a notice of initial determination, which includes any proposed alteration to the List. The Department will consider all public comments prior to the publication of a final determination of an updated list, which is made in consultation and cooperation with the Departments of State and Homeland Security.

## III. Definition of Forced/Indentured Child Labor

Under Section 6(c) of EO 13126:

''Forced or indentured child labor'' means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

## Information Sought

The Department is requesting public comment on the proposed updated EO 13126 List (*see* list of products and countries below), the inclusion of certain products on the List, the exclusion of other products from the List, and any other issue related to the fair and effective implementation of this aspect of EO 13126. This notice is a general solicitation of comments from the public. All submitted comments will be made a part of the record of the review referred to above and will be made available for public inspection.

In preparing the initial determination updating the List, the Department of Labor considered the products and countries mentioned in its child labor reports. It also considered the testimony, written submissions, and other information presented to the Department, as well as research on 77 countries carried out by the Department, in connection with its mandates under the 2005 Trafficking Victims Protection Reauthorization Act (TVPRA) to produce 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.'' The TVPRA list encompassed both goods made with forced labor and child labor, whereas the EO 13126 List only includes products made with forced or indentured child labor. Information on the TVPRA can be found at *http://www.dol.gov/ILAB/programs/ocft/tvpra.htm.* Finally, the Department considered information provided in two public submissions alleging forced or indentured child labor. The first was a public submission by Free the Slaves alleging forced child labor in the cocoa industry in Cote d'Ivoire, which was accepted for review by the Department on March 20, 2001. The second was a public submission accepted for review on October 1, 2007 by State Department Watch alleging the use of forced child labor in the production of bricks, coal, foundry products, chemicals, cotton, grape products, toys, and fireworks in China. The Department has consulted and cooperated with the Departments of State and Homeland Security in the initial determination of the updated list of products.

In developing the updated list of products, our review focused on available information concerning the use of forced or indentured child labor. The lack of available information does not, by itself, establish that, in any particular country, or for any particular product, forced or indentured child labor is *not* being used. Government resources for acquiring information are limited. In addition, information about actual working conditions in some countries is difficult or impossible to obtain, for a variety of reasons. For example, governments may be unable or unwilling to cooperate with international efforts, or the efforts of non-governmental organizations, to uncover and address abuses. Institutions or organizations that might uncover such information, such as free and independent news media, trade unions, and non-governmental organizations may not exist. In short, the list of products should not be taken as presenting a complete picture of the use of forced or indentured child labor around the world.

As outlined in the Procedural Guidelines, several factors were weighed in determining whether or not a product should be placed on the updated list: the nature of the information describing the use of forced or indentured child labor; the source of the information; the date of the information; the extent of corroboration of the information by appropriate sources; whether the information involved more than an isolated incident; and whether recent and credible efforts are being made to address forced or indentured child labor in a particular country and industry.

Based on recent, credible, and appropriately corroborated information from various sources, the Departments of Labor, State, and Homeland Security have preliminarily concluded that there is a reasonable basis to believe that the following products, identified by their country of origin, might have been mined, produced, or manufactured by forced or indentured child labor. The below list of products, by country of origin, constitutes the initial determination updating the EO 13126 list issued January 18, 2001.

| Product | Countries |
|---|---|
| Bamboo ..... | Burma |

| Product | Countries |
|---|---|
| Beans (green, soy, yellow). | Burma |
| Brazil Nuts/Chestnuts | Bolivia |
| Bricks | Burma, China, India, Nepal, Pakistan |
| Carpets | India, Nepal, Pakistan |
| Charcoal | Brazil |
| Coal | Pakistan |
| Coca (stimulant plant) | Colombia |
| Cocoa | Cote d'Ivoire, Nigeria |
| Coffee | Cote d'Ivoire |
| Cotton | Benin, Burkina Faso, China, Tajikistan, Uzbekistan |
| Cottonseed (hybrid) | India |
| Diamonds | Sierra Leone |
| Electronics | China |
| Embroidered Textiles (zari). | India, Nepal |
| Garments | Argentina, India, Thailand |
| Gold | Burkina Faso |
| Granite | Nigeria |
| Gravel (crushed stones). | Nigeria |
| Pornography | Russia |
| Rice | Burma, India, Mali |
| Rubber | Burma |
| Shrimp | Thailand |
| Stones | India, Nepal |
| Sugarcane | Bolivia, Burma |
| Teak | Burma |
| Tilapia (fish) | Ghana |
| Tobacco | Malawi |
| Toys | China |

The Department of Labor invites public comment on whether these products (and/or other products, regardless of whether they are mentioned in this Notice) should be included on the updated List of products requiring Federal contractor certification as to the use of forced or indentured child labor. To the extent possible, comments provided should address the Procedural Guideline factors discussed above. The Department is also interested in public comments relating to whether products initially determined to be on the List are designated with appropriate specificity and what, if any, alternative designations would better serve the purposes of EO 13126.

The bibliographies providing the preliminary basis for including each product on the list are available on the Internet at *http://www.dol.gov/ILAB/regs/eo13126/main.htm.*

As explained, following receipt and consideration of comments on the updated List set out above, the Department of Labor, in consultation and cooperation with the Departments of State Homeland Security, will issue a final determination in the **Federal Register** providing a final list of products. The Department of Labor intends to continue to revise the List periodically, to add and/or delete products, as justified by new information.

Signed at Washington, DC, this 2nd day of September 2009.

**Sandra Polaski,**

*Deputy Undersecretary, Bureau of International Labor Affairs.*

[FR Doc. E9–21507 Filed 9–10–09; 8:45 am]

**BILLING CODE 4510–28–P**

## OFFICE OF MANAGEMENT AND BUDGET

### Compliance Assistance Resources and Points of Contact Available to Small Businesses

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Small Business Paperwork Relief Act of 2002 (44 U.S.C. 3520), the Office of Management and Budget (OMB) is publishing a ''list of the compliance assistance resources available to small businesses'' and a list of the points of contacts in agencies ''to act as a liaison between the agency and small business concerns'' with respect to the collection of information and the control of paperwork. This information is posted on the following Web site: *http://www.business.gov/business-law/contacts/federal/.*

**FOR FURTHER INFORMATION CONTACT:** Wendy Liberante, Office of Information and Regulatory Affairs, Office of Management and Budget, E-mail: *wliberante@omb.eop.gov*, Telephone: (202) 395–3647. Inquiries may be submitted by facsimile to (202) 395–5167.

**SUPPLEMENTARY INFORMATION:** The Small Business Paperwork Relief Act of 2002 (Pub. L. 107–198) requires OMB to ''publish in the **Federal Register** and make available on the Internet (in consultation with the Small Business Administration) on an annual basis a list of the compliance assistance resources available to small businesses'' (44 U.S.C. 3504(c)(6)). OMB has, with the active assistance and support of the Small Business Administration (SBA) and the Business Gateway Program, assembled a list of the compliance assistance resources available to small businesses. This list is available today on the following Web site: *http://www.business.gov/business-law/contacts/federal/.* There is also a link to this information on the OMB Web site. In addition, under another provision of this Act, ''each agency shall, with respect to the collection of information and the control of paperwork, establish 1 point of contact in the agency to act as a liaison between the agency and small business concerns'' (44 U.S.C. 3506(i)(1)). These contacts are also available at *http://www.business.gov/business-law/contacts/federal/.* OMB and SBA have chosen to discharge this statutory responsibility by publishing agency compliance contact information on the business.gov Web site. Business.gov delivers compliance information to the public more effectively than having businesses go to individual agency Web sites, thereby improving the probability of success for business owners and agency regulatory programs. The public is not only able to find agency points of contact for compliance under the ''contacts and help'' tab on Business.gov, but when users look for information in the ''small business guides'' on particular topics, the relevant agency points of contact automatically appear as part of the guide.

**Kevin Neyland,**

*Acting Administrator, Office of Information and Regulatory Affairs.*

[FR Doc. E9–21965 Filed 9–10–09; 8:45 am]

**BILLING CODE 3110–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act.

**SUMMARY:** Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a remote field support and emergency provisions for the Expedition Vessel, *Kapitan Khlebnikov* for the 2009–2010 season and two following austral summers. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application within October 13, 2009. Permit applications 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:** Dr. Polly A. Penhale, Environmental Officer at the above address or (703) 292–8030.

**SUPPLEMENTARY INFORMATION:** NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of up to nine expeditions per year to Antarctica. During each trip, passengers are taken ashore at selected sites by Zodiac (rubber raft) or helicopter for approximately two to four hours at a time. On each zodiac or helicopter's landing, emergency gear would be taken ashore in case weather deteriorates and passengers are required to camp on shore. Anything taken ashore will be removed from Antarctica and disposed of in Ushuaia, Argentina, Port Stanley, Falkland Islands, or a substitute port of disembarkation. No hazardous domestic products or wastes (aerosol cans, paints, solvents, etc.) will be brought ashore. Cooking stoves/fuel will be used only in an emergency where passengers are forced to spend the night on shore. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

*Application for the permit is made by:* Pat Shaw, President, Quark Expeditions, Inc., 47 Water Street, Norwalk, CT 06854.

*Location:* Antarctica (south of 60 degrees south latitude).

*Dates:* October 1, 2009 to March 31, 2012.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. E9–21873 Filed 9–10–09; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act.

**SUMMARY:** Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field support camps with emergency provisions for the Expedition Vessels, *Lyubov Orlova* and *Ocean Nova* for the 2009–2010 season and the four following austral summers. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 13, 2009. Permit applications 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:** Dr. Polly A. Penhale, Environmental Officer, at the above address or (703) 292–8030.

**SUPPLEMENTARY INFORMATION:** NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of expeditions to Antarctica. During each trip, passengers are taken ashore at selected sites by Zodiac (rubber raft) for approximately two to four hours at a time. On each zodiac landing, emergency gear would be taken ashore in case weather deteriorates and passengers are required to camp on shore. Anything taken ashore will be removed from Antarctica and disposed of in Ushuaia, Argentina, Port Stanley, Falkland Islands, or a substitute port of disembarkation. No hazardous domestic products or wastes (aerosol cans, paints, solvents, etc.) will be brought ashore. Cooking stoves/fuel will be used only in an emergency where passengers are forced to spend night on shore. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

*Application for the permit is made by:* Pat Shaw, President, Quark Expeditions, Inc., 47 Water Street, Norwalk, CT 06854.

*Location:* Antarctica (south of 60 degrees south latitude).

*Dates:* November 1, 2009 to March 31, 2014.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. E9–21874 Filed 9–10–09; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Computer and Information Science and Engineering—(1115).

*Date and Time:* October 16, 2009, 8:30 a.m.–5 p.m. (EDT).

*Place:* The National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

*Type of Meeting:* Open.

*Contact Person:* Laura Gent, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. *Telephone:* (703) 292–8900.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To discuss strategic priorities in computing. To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director/CISE on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

*Agenda:* Report from the Assistant Director. Discussion of research, education, diversity, workforce issues in IT and long-range funding outlook.

Dated: September 8, 2009.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. E9–21942 Filed 9–10–09; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Membership of National Science Foundation's Senior Executive Service Performance Review Board

**AGENCY:** National Science Foundation.

**ACTION:** Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

**SUMMARY:** This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

**ADDRESSES:** Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph F. Burt at the above address or (703) 292–8180.

**SUPPLEMENTARY INFORMATION:** The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Cora B. Marrett, Acting Deputy Director, Chairperson.

Anthony A. Arnolie, Director, Office of Information and Resource Management and Chief Human Capital Officer.

Richard A. Behnke, Head, Upper Atmosphere Research Section.

Deborah L. Crawford, Deputy Assistant Director for Computer and Information Science and Engineering.

Deborah F. Lockhart, Deputy Director, Division of Mathematical Sciences.

Martha A. Rubenstein, Director, Budget Division.

David A. Ucko, Deputy Director, Division of Research on Learning in Formal and Informal Settings.

Dated: September 3, 2009.

**Joseph F. Burt,**

*Director, Division of Human Resource Management.*

[FR Doc. E9–21800 Filed 9–10–09; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2009–0218]**

## Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on June 3, 2009.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Nuclear Material Events Database (NMED) for the Collection of Event Report, Response, Analyses, and Follow-up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material.

3. *Current OMB approval number:* 3150–0178.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Agreement States are requested to provide copies of licensee material event reports electronically or by hard copy to NRC within 30 days of receipt from their licensee. In addition, Agreement States are requested to report events that may pose a significant health and safety hazard to the NRC Headquarters Operations Officer within the next working day of notification by an Agreement State licensee.

6. *Who will be required or asked to report:* Current Agreement States and any State receiving Agreement State status in the future.

7. *An estimate of the number of annual responses:* 669.

8. *The estimated number of annual respondents:* 35.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 689 hours for all existing Agreement State reporting.

10. *Abstract:* NRC regulations require NRC licensees to report incidents and events involving the use, transportation and security of radioactive byproduct material, and source material, such as those involving radiation overexposures, leaking or contaminated sealed source(s), release of excessive contamination of radioactive material, lost or stolen radioactive material, equipment failures, abandoned well logging sources and medical events. Agreement State licenses are also required to report these events to their individual Agreement State regulatory authorities under compatible Agreement State regulations. NRC is requesting that the Agreement States provide information to NRC on the initial notification, response actions, and follow-up investigations on events involving the use (including suspected theft or terrorist activities) of nuclear materials regulated pursuant to the Atomic Energy Act. The event information should be provided in a uniform electronic format, for assessment and identification of any facilities/site specific or generic safety concerns that could have the potential to impact public health and safety. The identification and review of safety concerns may result in lessons learned, and may also identify generic issues for further study which could result in proposals for changes or revisions to technical or regulatory designs, processes, standards, guidance or requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 13, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. NRC Desk Officer, Office of Information and Regulatory Affairs (3150–0178), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The Acting NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 3rd day of September 2009.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*Acting NRC Clearance Officer, Office of Information Services.*

[FR Doc. E9–21977 Filed 9–10–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0314; Docket No. 50–461]**

## Exelon Generation Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Exelon Generation Company, LLC (the licensee) to withdraw its June 15, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML091660580), application for proposed amendment to Facility Operating License No. NPF–62 for the Clinton Power Station, Unit No. 1, located in DeWitt County.

The proposed amendment would have eliminated the requirement for main steamline isolations on high turbine building temperatures from

Technical Specifications Section 3.3.6.1, ''Primary Containment and Drywell Isolation Instrumentation,'' Table 3.3.6.1–1.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 16, 2009 (74 FR 34594–34596). However, by letter dated August 4, 2009, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 15, 2009, and the licensee's letter dated August 4, 2009 (ADAMS Accession No. ML092170159), which withdrew the application for license amendment. 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 2nd day of September 2009.

For the Nuclear Regulatory Commission.

**Cameron S. Goodwin,**

*Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing Office of Nuclear Reactor Regulation.*

[FR Doc. E9–21976 Filed 9–10–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–391; NRC–2008–0369]**

## Tennessee Valley Authority, Watts Bar Nuclear Station, Unit 2; Notice of Intent To Prepare a Supplement to the Operating License Final Environmental Statement and Conduct Scoping Process

Tennessee Valley Authority (TVA) has submitted an application for an Operating License for Watts Bar Nuclear Station Unit 2 (WBN2). WBN2 is located in Rhea County, Tennessee, on the Tennessee River. The application for the operating license, dated June 30, 1976, was submitted pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50. An updated operating license was submitted on March 4, 2009. The WBN Unit 2 Final Supplemental Environmental Impact Statement for the Completion and Operation of WBN Unit 2 (June 2007) (FSEIS) was submitted to the U.S Nuclear Regulatory Commission (NRC) on February 15, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession Number ML080510469). The proposed action in response to the updated application is the issuance of an operating license that would authorize TVA to possess, use, and operate a second lightwater nuclear reactor (the facility), Watts Bar Nuclear Plant (WBN) Unit 2, located on the applicant's site in Rhea County, Tennessee. The unit would operate at a steady-state power level of 3,411 megawatts thermal. Alternatives to the proposed action include the denial of an operating license or issuance of a license for a different power level. The purpose of this notice is to inform the public that a supplement to the final environmental statement (FES) related to the review of the license application will be prepared in accordance with 10 CFR 51.92 and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, ''Coordination With the National Environmental Policy Act,'' the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

TVA submitted the FSEIS on February 15, 2008, as part of the updated application. The FSEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, or from the NRC's ADAMS. The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm*. The ADAMS Accession Number for the FSEIS is ML080510469. In addition, TVA provided supplemental information to the FSEIS in two additional submittals: Watts Bar Nuclear Plant (WBN)—Unit 2—Final Supplemental Environmental Impact Statement—[response to] Request for Additional Information dated July 2, 2008 (ML081850460), and Watts Bar Nuclear Plant (WBN) Unit 2—Final Supplemental Environmental Impact Statement—Severe Accident Management Alternatives dated January 27, 2009 (ML090360706). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr.resource@nrc.gov*. The FSEIS may also be viewed on the Internet at *http://www.nrc.gov/reactors/plant-specific-items/watts-bar/key-correspondence.html*.

This notice advises the public that the NRC intends to gather the information necessary to prepare a supplement to the WBN2 Final Environmental Statement. The matters to be addressed in the supplement include evaluation of new and significant circumstances or information, relevant to environmental concerns, that developed after the 1978 FES (ADAMS Accession Number ML082560457). This notice is being published in accordance with NEPA and the NRC's regulations found in 10 CFR Part 51.

The NRC will first conduct a scoping process for the supplement to the FES and, as soon as practicable thereafter, will prepare a draft supplement to the FES for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the FES as described in 40 CFR 51.29(a)(1)–(8) will be used to accomplish the following:

1. Define the proposed action which is to be the subject of the supplement, using the provision of 10 CFR 1502.4.
2. Determine the scope of the supplement and identify the significant issues to be analyzed in depth.
3. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.
4. Identify any environmental assessments and ElSs that are being, or will be, prepared which are related to, but are not part of, the scope of the supplement.
5. Identify other environmental review and consultation requirements related to the proposed action so that other required analyses may be prepared concurrently and integrated with the supplement.
6. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.
7. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the FES.
8. Describe how the supplement to the FES will be prepared, including any contractor assistance to be used.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://adamswebsearch.nrc.gov/dologin.htm.* The NRC may revise the determinations in the summary as appropriate. The staff will then prepare and issue for comment the draft supplement to the FES, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses. After receipt and consideration of the comments, the NRC will prepare a final supplement to the FES, which will also be available for public inspection.

The NRC is inviting the following to participate in scoping:

a. The applicant, Tennessee Valley Authority.

b. Other Federal agencies that have jurisdiction by law or special expertise with respect to any environmental impact involved, or that are authorized to develop and enforce relevant environmental standards.

c. Affected State and local agencies, including those authorized to develop and enforce relevant environmental standards.

d. Affected Native American Tribes.

e. Persons who requested an opportunity to participate in the scoping process.

f. Person who petitioned for leave to intervene in the proceeding.

In accordance with 10 CFR 51.26, the scoping process for an EIS, which in this case is equivalent to the FES, may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in the FES. The NRC has decided to hold public meetings for the WBN2 operating license supplement to the FES. The scoping meetings will be held at the Magnuson Hotel at 1421 Murrays Chapel Road in Sweetwater, Tennessee, on Tuesday, October 6, 2009. There will be two sessions to accommodate interested persons. The first session will be at 1:30 p.m. and the second at 6:30 p.m. Both sessions will be transcribed and will include: An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the FES, and the proposed review schedule; and the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the FES. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No formal comments on the proposed scope of the supplement to the FES will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting the NRC Project Manager, Mr. Joel Wiebe, by telephone at 301–415–6606, or by e-mail to *Joel.Wiebe@nrc.gov* no later than September 30, 2009. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the FES.

Members of the public may send written comments on the environmental scope of the WBN2 operating license review to: Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop TWB–05B01, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Electronic comments may be sent by e-mail to the NRC at *RidsNrrPMWattsBar2.Resource@nrc.gov*, and should be sent no later than October 30, 2009, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://adamswebsearch.nrc.gov/dologin.htm.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Participation in the scoping process for the supplement to the FES does not entitle participants to become parties to the proceeding to which the supplement to the FES relates. Notice of opportunity for a hearing regarding the updated license application was the subject of the aforementioned **Federal Register** notice 74 FR 20350. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

Information about the proposed action, the supplement to the FES, and the scoping process may be obtained from Mr. Wiebe at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 4th day of September 2009.

For the Nuclear Regulatory Commission.

**L. Raghavan,**

*Chief, Watts Bar Special Projects Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E9–21978 Filed 9–10–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2008–0465]**

## Notice of Issuance of Guidelines on Use of Firearms by Security Personnel; Notice of Effective Date of Statute

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of issuance; Notice of effective date.

**SUMMARY:** The Nuclear Regulatory Commission (Commission or NRC) is issuing, with the approval of the U.S. Attorney General, guidelines on the use of firearms by security personnel whose official duties include the protection of NRC-regulated facilities, radioactive material, or other property. On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (the Act). Section 653 of the Act amended the Atomic Energy Act of 1954 (AEA) by adding new section 161A., regarding the use of firearms by security personnel. Under the provisions of section 161A.d., section 161A. takes effect on the date that these guidelines are issued by the Commission, with the approval of the Attorney General.

**DATES:** Section 161A. of the AEA takes effect on September 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Philip Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6557, e-mail *Phil.Brochman@nrc.gov* or Susan Fonner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone

(301) 415–1629, e-mail *Susan.Fonner@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005). Section 653 of the Act amended the AEA by adding section 161A., ''Use of Firearms by Security Personnel,'' 42 U.S.C. 2201a. Section 161A. of the AEA provides the Commission with new authority with respect to firearms that will enhance security at designated facilities of NRC licensees and certificate holders and will also enhance security with respect to certain radioactive material or other property owned or possessed by an NRC licensee or certificate holder, or the transportation of such material or other property.

Specifically, section 161A. provides two potential advantages to NRC licensees and certificate holders to enhance security. NRC's current regulations authorize in certain circumstances the possession of standard weapons by the security personnel of licensees and certificate holders. Under section 161A., the Commission is authorized to permit licensees and certificate holders to obtain weapons not previously permitted to be owned or possessed under Commission authority, that is, short-barreled shotguns, short-barreled rifles, and machineguns (*i.e.,* enhanced weapons). In addition, section 161A. authorizes the Commission to permit security personnel of a licensee or certificate holder to transfer, receive, possess, transport, import, and use handguns, rifles, shotguns, short-barreled shotguns, short-barreled rifles, machineguns, semiautomatic assault weapons, ammunition for such weapons, and large capacity ammunition feeding devices, notwithstanding State, local, and certain Federal firearms laws, including regulations, that prohibit such actions.

Prior to the enactment of section 161A., with limited exceptions, only Federal, State or local law enforcement could lawfully possess machineguns. Section 161A. authority, however, allows licensees and certificate holders, who obtain the necessary authorization from the NRC, to lawfully possess machineguns that they previously were not authorized to possess.

As indicated in the attached guidelines, an NRC licensee or certificate holder will be required to apply to the Commission to take advantage of the new authority provided by section 161A. Prior to granting an application to permit security personnel of an NRC licensee or certificate holder to transfer, receive, possess, transport, import, and use a weapon, ammunition, or device not previously authorized, the Commission must determine that the requested permission is necessary in the discharge of the official duties of the security personnel and that the security personnel are engaged in protecting: (1) A facility owned or operated by an NRC licensee or certificate holder and designated by the Commission, or (2) radioactive material or other property that is owned or possessed by an NRC licensee or certificate holder, or that is being transported to or from a facility owned or operated by such a licensee or certificate holder, and which has been determined by the Commission to be of significance to the common defense and security or public health and safety.

Furthermore, an NRC licensee or certificate holder that applies to the NRC for enhanced weapons authority under section 161A. must also comply with applicable U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) firearms requirements before obtaining such enhanced weapons.

Section 161A. also mandates that all security personnel with duties requiring access to covered weapons who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder shall be subject to a fingerprint-based background check by the Attorney General and a firearms background check against the Federal National Instant Background Check System (NICS). Consequently, these firearms background check requirements are mandatory for all such security personnel who are engaged in protecting licensees and certificate holders that fall within Commission-designated classes of facilities, radioactive material, and other property and who employ covered weapons as part of their protective strategy. These firearms background checks will provide assurance that such security personnel are not barred under Federal and State law from receiving, possessing, transporting, or using any covered weapons.

Under the provisions of section 161A.d., 42 U.S.C. 2201a(d), section 161A. takes effect on the date that these guidelines are issued by the Commission, with the approval of the Attorney General. The Attorney General approved these guidelines by letter July 7, 2009. Accordingly, section 161A. takes effect as specified in the **DATES** section above.

The recordkeeping and reporting requirements described in these guidelines will take effect upon the Commission's promulgation of regulations or the issuance of orders. Therefore, the NRC will obtain, as part of the promulgation or issuance of such regulations or orders, approval from the Office of Management and Budget of any such information collection burdens, as required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Regulations or orders issued by the Commission concerning section 161A. shall be consistent with the provisions of these guidelines. These guidelines do not supersede or alter existing Commission regulations or orders. The Commission will review and revise existing Commission regulations and orders to be consistent with these guidelines, as appropriate.

Dated at Rockville, Maryland, this 4th day of September 2009.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

## Attachment—Guidelines on the Use of Firearms by Security Personnel in Protecting U.S. NRC-Regulated Facilities, Radioactive Material, and Other Property

### 1. Authority and Scope

On August 8, 2005, the President signed into law the Energy Policy Act of 2005 (the Act), Public Law 109–58, 119 Stat. 594 (2005). Section 653 of the Act amended the Atomic Energy Act of 1954 (AEA) by adding section 161A., ''Use of Firearms by Security Personnel,'' 42 U.S.C. 2201a. Section 161A. of the AEA provides new authority to the U.S. Nuclear Regulatory Commission (Commission or NRC) to enhance security at designated facilities of NRC licensees and certificate holders and to enhance security with respect to certain radioactive material or other property owned or possessed by an NRC licensee or certificate holder, or the transportation of such material or other property.

Specifically, section 161A. provides two potential advantages to NRC licensees and certificate holders to enhance security. NRC's regulations authorize in certain circumstances the possession of standard weapons by the security personnel of licensees and certificate holders. Under section 161A., the Commission is authorized to permit licensees and certificate holders to obtain weapons not previously permitted to be owned or possessed under Commission authority, *i.e.,* enhanced weapons. In addition, section 161A. authorizes the Commission to preempt State, local, and certain Federal

firearms laws, including regulations, that prohibit the transfer, receipt, possession, transport, import, and use of handguns, rifles, shotguns, short-barreled shotguns, short-barreled rifles, machineguns, semiautomatic assault weapons, ammunition for such weapons, and large capacity ammunition feeding devices.

Prior to the enactment of section 161A., with limited exceptions, only Federal, State or local law enforcement could lawfully possess machineguns. Section 161A. authority, however, allows licensees and certificate holders who obtain the necessary authorization from the NRC, to lawfully possess machineguns (enhanced weapons authority) that they previously were not authorized to possess.

An NRC licensee or certificate holder must apply to the Commission to take advantage of the provisions of section 161A. Prior to granting an application to permit security personnel of an NRC licensee or certificate holder to transfer, receive, possess, transport, import, and use a weapon, ammunition, or device not previously authorized, the Commission must determine that the requested authority is necessary in the discharge of the official duties of the security personnel and the security personnel are engaged in protecting: (1) A facility owned or operated by an NRC licensee or certificate holder and designated by the Commission, or (2) radioactive material or other property that has been determined by the Commission to be of significance to public health and safety or the common defense and security, and that is owned or possessed by an NRC licensee or certificate holder, or that is being transported to or from an NRC-regulated facility. The Commission's authorization shall only apply to use by security personnel of a licensee or certificate holder of a weapon, ammunition, or a device listed in section 161A.b. when used by such personnel while in the discharge of their official duties.

Section 161A. also mandates that all security personnel with duties requiring access to covered weapons who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder shall be subject to a fingerprint-based background check by the Attorney General and a firearms background check against the Federal National Instant Background Check System (NICS). These firearms background checks will provide assurance that such security personnel are not barred from possessing, transporting, or using any covered weapons.

Under the provisions of section 161A.d., 42 U.S.C. 2201a(d), section 161A. takes effect on the date that these guidelines are issued by the Commission after being approved by the U.S. Attorney General.

Regulations or orders issued by the Commission concerning section 161A. shall be consistent with the provisions of these guidelines. Modification of these guidelines by the Commission must be made with the concurrence of the Attorney General.

Definitions of terms that may not have a commonly understood meaning are contained in section 8 of these guidelines.

**2. Commission Designations and Determinations**

After the issuance of these guidelines, the Commission will promulgate regulations or issue orders that authorize specific classes of licensees and certificate holders to apply to the Commission to use the authority of section 161A. These regulations or orders will designate the specific types of facilities for which licensees and certificate holders are authorized to use the authority of section 161A. In addition, Commission regulations or orders will designate the specific types of radioactive material or other property owned or possessed by NRC licensees and certificate holders, or specific types of radioactive material or other property being transported to or from a facility owned or operated by an NRC licensee or certificate holder, for which an application to the Commission may be made to use the authority of section 161A. The Commission's designation of specific radioactive material or other property will be based upon a finding that the material or property is of significance to the common defense and security or public health and safety. These regulations or orders will require a firearms background check (as described in section 5 of these guidelines) for armed security personnel who have access to covered weapons and who are engaged in the protection of a facility, radioactive material, or other property owned or operated by an NRC licensee or certificate holder that has been designated by the Commission pursuant to section 161A.

The Commission will promulgate regulations or issue orders establishing a process for NRC-regulated entities to apply for and obtain preemption authority under section 161A. The Commission will also promulgate regulations or issue orders establishing a process for NRC-regulated entities to apply for and obtain both enhanced weapons authority and preemption authority under section 161A. An NRC-regulated entity may obtain preemption authority without applying for enhanced weapons authority. An NRC-regulated entity seeking enhanced weapons authority must obtain both enhanced weapons authority and preemption authority. A licensee's or certificate holder's applications for preemption authority and enhanced weapons authority may be sequential or concurrent, but the NRC must approve the licensees' and certificate holders' applications for preemption authority at the same time as or before approving their application for enhanced weapons authority.

Before granting preemption authority, the Commission will require persons who are licensees and certificate holders on the effective date of these guidelines, and who have applied for preemption authority only or for enhanced weapons authority and preemption authority, to notify the NRC when a sufficient number of security personnel have completed a satisfactory firearms background check to permit the licensee or certificate holder to meet the licensee's or certificate holder's security personnel minimum staffing and fatigue requirements. The NRC will review such readiness notifications on a case-by-case basis prior to approving a licensee's or certificate holder's application for preemption authority.

In addition, Commission regulations or orders will require that before licensees and certificate holders may be granted authority by the NRC to obtain enhanced weapons they must: (1) Apply to the NRC for preemption authority, (2) apply to the NRC for approval to obtain enhanced weapons, and (3) develop new, or revise existing, physical security plans (including plans for the safe storage of covered weapons), security personnel training and qualification plans, safeguards contingency plans, and safety assessments incorporating the use of the enhanced weapons to be employed. These plans and assessments must be specific to the facility, radioactive material, or other property being protected; must identify the specific type(s) of covered weapons that will be used by security personnel; and must address how these covered weapons will be employed in meeting the NRC-required protective strategy. Licensees and certificate holders must submit these new, or revised, plans and assessments to the NRC for review and written approval. The requirements for the contents of the licensee's and certificate holder's physical security

plans, security personnel training and qualification plans, safeguards contingency plans, and safety assessments on the use of enhanced weapons are contained in NRC regulations.

Based upon the NRC's review of an applicant's plans and assessments (as provided in the preceding paragraph) and upon a determination that all of the requirements of section 161A. have been, or will be, met, the NRC will provide a written statement to the licensee or certificate holder stating that the NRC has determined that the licensee's or certificate holder's need for the specific enhanced weapons that the licensee or certificate holder intends to deploy satisfies the requirements of the NRC under section 161A.

Licensees and certificate holders lawfully possessing enhanced weapons under an authority other than section 161A. on or before the effective date of these guidelines are not required to revise their previously approved security plans, unless the licensee or certificate holder applies to the NRC under section 161A. for preemption authority or for enhanced weapons authority and preemption authority.

**3. Applicability of Federal Firearms Laws, Regulations and Licensing Requirements**

In addition to complying with Commission regulations and orders implementing section 161A., licensees and certificate holders covered by these guidelines must also comply with applicable provisions of Title 18 U.S.C. Chapter 44 (the Gun Control Act (GCA)) and Title 26 U.S.C. Chapter 53 (National Firearms Act (NFA)) and 27 CFR parts 478 and 479 (the applicable regulations promulgated under those laws by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)), regarding the transfer, receipt, possession, transportation, importation, or use of covered weapons, except to the extent that those regulations are superseded by section 161A. After a licensee's or certificate holder's receipt of the NRC's written approval of their application for enhanced weapons authority, the licensee or certificate holder may in accordance with 26 U.S.C. Chapter 53 have enhanced weapons transferred to them. An application to transfer an enhanced weapon to a licensee or certificate holder must be submitted to ATF by the transferor of the enhanced weapon. The application must include all required information including a copy of the NRC's written approval to possess specific enhanced weapons under section 161A. All enhanced weapons must be registered with ATF under the name of the licensee or certificate holder.

**4. Training and Qualification on Enhanced Weapons**

The Commission will promulgate regulations or issue orders requiring NRC licensees or certificate holders who have received written NRC approval of their application for section 161A. enhanced weapons authority to provide specific training to their security personnel on the possession, storage, maintenance, and use of enhanced weapons and on tactical maneuvers employing such weapons in protecting NRC-designated facilities, radioactive material, or other property, whichever is applicable. The regulations or orders will require such licensees and certificate holders to incorporate within their security personnel training and qualification plans specific training and qualification information applicable to the enhanced weapons to be employed, including information regarding tactical maneuvers that security personnel will carry out with those weapons. This training and qualification information must conform with firearms training and qualification standards developed by nationally recognized firearms organizations or standard setting bodies, or with standards developed by Federal agencies, such as the U.S. Department of Homeland Security's Federal Law Enforcement Training Center, the U.S. Department of Energy's National Training Center, and the U.S. Department of Defense.

**5. Firearms Background Checks**

The Commission will promulgate regulations or issue orders establishing requirements for firearms background checks for security personnel whose duties require access to covered weapons in connection with the protection of a facility, radioactive material, or other property owned or operated by an NRC licensee or certificate holder that has been designated by the Commission under section 2 of these guidelines.

Licensees and certificate holders may apply to the NRC for preemption authority only or they may apply for both enhanced weapons authority and preemption authority. In either case, to obtain approval of such an application, satisfactory firearms background checks must have been completed for the licensee's or certificate holder's security personnel whose official duties require access to covered weapons. The firearms background check requirement applies to such security personnel whether they are directly employed by the licensee or certificate holder or they are employed by a security contractor who provides security services to the licensee or certificate holder.

The Commission's regulations or orders will set forth the criteria for satisfactory and adverse firearms background checks, as defined in section 8(a) of these guidelines. The regulations or orders will require that licensees and certificate holders who employ covered weapons as part of their protective strategy for a facility, radioactive material, or other property that is included within the classes of facilities, radioactive material, or other property designated by the Commission shall complete a satisfactory firearms background check of security personnel who have, or are proposed to have, official duties that require access to covered weapons in the protection of such facilities, radioactive material, or other property. The firearms background checks are in addition to any other background checks or criminal history checks required for security personnel under Commission regulations or orders.

Licensees and certificate holders who employ covered weapons as part of their protective strategy for a facility, radioactive material, or other property that is included within the classes of facilities, radioactive material, or other property designated by the Commission shall begin firearms background checks of their security personnel who have, or are proposed to have, official duties that require access to covered weapons in the protection of such facilities, radioactive material, or other property after the NRC issues a rule or order designating the class of facility, radioactive material, or other property into which their facility, radioactive material, or other property falls. Within 180 days of the NRC issuing such a rule or order, affected licensees and certificate holders must remove such personnel from duties requiring access to covered weapons if they have received an adverse firearms background check. During this 180-day period, affected licensees and certificate holders may permit such personnel who receive a ''delayed'' National Instant Criminal Background Check System (NICS) response to continue duties that require access to standard weapons pending resolution of the ''delayed'' response; however, they must remove such individuals from duties requiring access to enhanced weapons.

Licensees and certificate holders may not permit security personnel who receive a ''denied'' NICS response, as defined in sections 8(a) and (c), to perform duties requiring access to

covered weapons, except as provided in the next paragraph.

After the 180-day period, licensees and certificate holders may not permit security personnel who receive an adverse firearms background check to perform duties requiring access to covered weapons, except that security personnel who received a ''denied'' or ''delayed'' NICS response and who subsequently receive a response that a satisfactory firearms background check has been completed may be permitted access to covered weapons.

Licensees or certificate holders who employ covered weapons as part of their protective strategy for a facility, radioactive material, or other property that is included within the classes of facilities, radioactive material, or other property designated by the Commission are required to conduct periodic firearms background checks of all security personnel who have, or are proposed to have, official duties that require access to covered weapons in the protection of such a facility, radioactive material, or other property, at a minimum of once every five years after their first background check. However, these checks may be conducted more frequently if required by Commission regulation or order, or if the licensee or certificate holder requires an earlier check. Security personnel who receive an adverse firearms background check response upon a recheck must be removed from duties that require access to covered weapons. Security personnel so removed who subsequently complete a satisfactory firearm background check may be permitted access to covered weapons. In addition, the Commission will require a new firearms background check for security personnel who have had a break of greater than one (1) week in employment by the licensee or certificate holder or in employment by a contractor who provides security services to a licensee or certificate holder.

The Commission will require a new firearms background check for security personnel who have transferred to the employment or the service of the licensee or certificate holder from a different licensee or certificate holder in whose employ they previously completed a satisfactory firearms background check. However, a change in the ownership of the licensee or certificate holder, a change in the ownership of the security contractor providing the security personnel, or a change in the security contractor providing the security personnel will not require, by itself, the performance of a new firearms background check for personnel who have previously completed a satisfactory firearms background check.

The Commission will require each licensee or certificate holder who employs enhanced weapons as part of their protective strategy for a facility, radioactive material, or other property that is included within the classes of facilities, radioactive material, or other property designated by the Commission to complete a satisfactory firearms background check for security personnel whose official duties require access to enhanced weapons in the protection of such facilities, radioactive material, or other property, before such personnel may be given access to enhanced weapons. The Commission will promulgate regulations or issue orders requiring such licensees or certificate holders to establish procedures for notifying the NRC when a security officer assigned duties requiring access to covered weapons is permanently removed from such duties because of an adverse firearms background check. The NRC will promptly report suspected violations of Federal law to the appropriate Federal agency and suspected violations of State law to the appropriate State agency.

The Commission will promulgate regulations or issue orders providing a process for security personnel who have received an adverse firearms background check to appeal a ''denied'' NICS response to the FBI, or to provide additional information to the FBI to resolve a ''delayed'' NICS response. Security personnel must file a request to appeal a ''denied'' NICS response or a request to resolve a ''delayed'' NICS response within 45 calendar days after the date the licensee or certificate holder notifies the individual of the adverse response. The request must include appropriate documentation or record(s) establishing the legal or factual basis, or both, for the challenge. It is the responsibility of a person who is appealing or resolving an adverse firearms background check to provide the FBI with any additional information requested by the FBI to resolve an adverse firearms background check. Such persons must supply this information to the FBI within 45 calendar days after the FBI's request. Extensions of the time period to supply additional requested information in support of a timely appeal or resolution request may be granted by the FBI for good cause shown, as determined by the FBI. Failure to timely initiate an appeal or resolution request or timely provide additional information requested by the FBI will result in the barring or abandonment of the appeal or resolution request. Appeals or resolution requests that are barred or abandoned because of the failure to comply with these deadlines may only be pursued after resubmission of a firearms background check request on the individual. Such resubmission will be by, and at the sole discretion of, a licensee or certificate holder.

**6. Enhanced Weapons Accountability, Transfer, Transportation, and Record Keeping**

The Commission will promulgate regulations or issue orders requiring licensees and certificate holders to perform periodic accountability inventories of the enhanced weapons in their possession to verify their continued possession of each enhanced weapon. The regulations or orders will require licensees or certificate holders to complete such inventories at specified intervals, and at least one inventory will be conducted each year. These inventories must be based upon the verification of the presence at the licensee's or certificate holder's facility of each enhanced weapon or upon a verification of the presence of an intact tamper indicating device (TID) for enhanced weapons that are stored in locked and sealed storage or ready-service containers at the licensee's or certificate holder's facility. The regulations or orders will require that licensees and certificate holders permitting enhanced weapons to be removed from their facility (*i.e.*, the owner controlled area) by security personnel for permissible reasons verify that such weapons are subsequently returned to the licensee's or certificate holder's facility upon completion of official use of the weapons.

Permissible reasons for removal of enhanced weapons from the licensee's or certificate holder's facility include: (1) Removal for use at a firing range or training facility used by the licensee or certificate holder, and (2) removal for use in escorting shipments of radioactive material or other property designated by the Commission under section 2 of these guidelines, if the material or other property is being transported to or from the licensee's or certificate holder's facility. The Commission may provide other permissible reasons for the removal of enhanced weapons by regulation or order.

Any other removal of enhanced weapons from a licensee's or certificate holder's facility would be a transfer of those weapons. The licensee or certificate holder may only transfer (by sale or otherwise) enhanced weapons

pursuant to an application approved by ATF under 26 U.S.C. Chapter 53.

A licensee or certificate holder receiving enhanced weapons must assist the transferor in completing an application to transfer such weapons in accordance with 26 U.S.C. 5812, and must provide the transferor a copy of the NRC's written approval of their application for enhanced weapons authority. Enhanced weapons may only be transferred to the licensee or certificate holder, not to a contractor of the licensee or certificate holder.

The Commission will promulgate regulations or issue orders requiring a licensee or certificate holder possessing enhanced weapons to notify the NRC and the appropriate local authorities of any stolen or lost enhanced weapons upon the discovery of such theft or loss. Licensees and certificate holders will also have an independent obligation, pursuant to 27 CFR 479.141, to report to ATF stolen or lost enhanced weapons registered in accordance with 26 U.S.C. 5841 immediately upon the discovery of such theft or loss.

Security personnel transporting enhanced weapons to or from a firing range or training facility used by the licensee or certificate holder are responsible for assuring that the weapons are unloaded and locked in a secure container during transport. Except as provided in the next paragraph, security personnel transporting covered weapons to or from a licensee's or certificate holder's facility following the completion of, or in preparation for, escorting designated radioactive material or other property being transported to or from the licensee's or certificate holder's facility are responsible for assuring that the weapons are unloaded and locked in a secure container during transport. In addition to being in a secure container, the contents of the container should only be accessible by authorized personnel. Unloaded covered weapons and ammunition for such weapons may be transported in the same secure container during transport.

Security personnel required to carry covered weapons while escorting designated radioactive material or other property being transported to or from the licensee's or certificate holder's facility (whether intrastate or interstate) are responsible for assuring that such weapons are maintained in a state of loaded readiness and available for immediate use while they are accompanying the transport.

To facilitate compliance with these guidelines, the NRC's regulations or orders will require licensees and certificate holders to keep records (capable of being inspected or audited by the NRC) relating to the receipt, transfer, and transportation of enhanced weapons. The records will be required to include the following minimum information relating to receipt and transfer of enhanced weapons: the date of receipt of the enhanced weapon; the name and address of the person from whom the enhanced weapon was received; the name of the manufacturer and importer (if any) of the enhanced weapon; the model, serial number, type, and caliber or gauge of the enhanced weapon; and for any transfer of an enhanced weapon (including sending off for repairs) by the licensee or certificate holder to another person, the name and address of the person to whom the enhanced weapon was transferred and the date of the transfer. The records will be required to include the following minimum information relating to transportation of enhanced weapons: the date of departure of the enhanced weapon from, and the date of return of the enhanced weapon to, the licensee's or certificate holder's facility; the purpose of the enhanced weapon's transportation; the name of the person transporting the enhanced weapon and the name of the person/facility to whom the enhanced weapon is being transported; and the model, serial number, type, and caliber or gauge of the enhanced weapon.

**7. Termination, Modification, Suspension, and Revocation**

The Commission will promulgate regulations or issue orders setting forth standards for the termination, modification, suspension, or revocation of the NRC's approval of a licensee's or certificate holder's preemption authority or enhanced weapons authority and preemption authority. Within three (3) business days of notifying the licensee or certificate holder, the NRC will notify ATF of the termination, modification, suspension, or revocation of a licensee's or certificate holder's preemption authority or enhanced weapons authority and preemption authority. Such a notification will be made to the position or point of contact designated by ATF. The regulations or orders will require licensees and certificate holders to transfer any enhanced weapons that they are no longer authorized to lawfully possess under section 161A., or that they wish to dispose of, to (1) a Federal, State, or local government entity; (2) a Federal firearms licensee authorized to receive the enhanced weapons under applicable law and regulations; and (3) other NRC licensees and certificate holders subject to section 161A. that are authorized to receive and possess these weapons. Licensees and certificate holders may also abandon such weapons to ATF. Transfers of such enhanced weapons must be made in accordance with section 6 of these guidelines.

The regulations or orders will require licensees and certificate holders to transfer any enhanced weapons (1) prior to NRC approval of the termination or modification of a licensee's or certificate holder's authority to possess the enhanced weapons under section 161A., and (2) as soon as practicable following NRC suspension or revocation of the licensee's or certificate holder's authority to lawfully possess enhanced weapons under section 161A.

Licensees and certificate holders who have had their preemption authority or enhanced weapons and preemption authority suspended or revoked may reapply for such authority by filing a new application for such authority under these guidelines.

Licensees and certificate holders who intend to obtain enhanced weapons different from the weapons previously approved by the NRC must submit to the NRC for prior review and approval revised physical security plans, training and qualification plans, safeguards contingency plans, and safety assessments addressing the use of these different enhanced weapons.

**8. Definitions**

(a) As used in these guidelines—

*Adverse firearms background check* means a firearms background check that has resulted in a ''denied'' or ''delayed'' NICS response.

*Covered weapon* means any handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machinegun, ammunition for any such weapon, or large capacity ammunition feeding device as specified under section 161A. Covered weapons include both enhanced weapons and standard weapons.

*Enhanced weapon* means any short-barreled shotgun, short-barreled rifle, or machinegun. Enhanced weapons do not include destructive devices as defined in 18 U.S.C. 921(a). Enhanced weapons do not include standard weapons.

*Firearms background check* means a background check by the Attorney General pursuant to section 161A. that includes a check against the Federal Bureau of Investigation's (FBI's) fingerprint system and the NICS.

*NICS* means the National Instant Criminal Background Check System established by Section 103(b) of the Brady Handgun Violence Prevention Act, Public Law 103–159, 107 Stat.

1536, that is operated by the FBI's Criminal Justice Information Services Division.

*NICS response* means a response provided by the FBI as the result of a firearms background check against the NICS. Such a response may be ''proceed,'' ''delayed,'' or ''denied.''

*Standard weapon* means any handgun, rifle, shotgun, semi-automatic assault weapon, or large capacity ammunition feeding device. Standard weapons do not include enhanced weapons.

*Satisfactory firearms background check* means a firearms background check that has resulted in a ''proceed'' NICS response.

(b) The terms ''handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machinegun, ammunition, and large capacity ammunition feeding device'' have the same meaning provided for these terms in 18 U.S.C. 921(a).

(c) The terms ''proceed,'' ''delayed,'' and ''denied,'' as used in NICS responses, have the same meaning provided for these terms in the FBI's regulations in 28 CFR part 25.

**Disclaimer**

These guidelines may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any manner, civil or criminal, and they do not place any limitations on otherwise lawful activities of the agencies.

[FR Doc. E9–21980 Filed 9–10–09; 8:45 am]

**BILLING CODE 7590–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11868 and #11869]**

### New York Disaster #NY–00079

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–1857–DR), dated September 1, 2009.

*Incident:* Severe Storms and Flooding.

*Incident Period:* August 8, 2009 through August 10, 2009.

*Effective Date:* September 1, 2009.

*Physical Loan Application Deadline Date:* November 2, 2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* June 1, 2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on September 1, 2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Cattaraugus, Chautauqua, Erie.

The Interest Rates are:

| | Percent |
|---|---|
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.500. |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000. |

The number assigned to this disaster for physical damage is 11868B and for economic injury is 11869B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–21846 Filed 9–10–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28896; File No. 812–13631]**

### Columbia Funds Series Trust, et al.; Notice of Application

September 4, 2009.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

**SUMMARY:** *Summary of Application:* Applicants request an order to permit registered open-end investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

*Applicants:* Columbia Funds Series Trust and Columbia Funds Series Trust II (together, the ''Trusts'') and Columbia Management Advisors, LLC (the ''Adviser'').

**DATES:** *Filing Dates:* The application was filed on February 6, 2009 and amended on August 25, 2009.

*Hearing or Notification of Hearing*: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 29, 2009 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Peter T. Fariel, Esq., Bank of America, N.A., MA5–515–11–05, One Financial Center, 11th Floor, Boston, Massachusetts 02111.

**FOR FURTHER INFORMATION CONTACT:** Deepak Pai, Senior Counsel, at (202) 551–6876, or Marilyn Mann, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm*, or by calling (202) 551–8090.

**Applicants' Representations**

1. The Trusts are organized as Delaware statutory trusts and are registered under the Act as open-end management investment companies. The Adviser, a limited liability company organized under Delaware law and an indirect wholly owned subsidiary of Bank of America Corporation, is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as the investment adviser to each Applicant Fund (as defined below).

2. Applicants request an exemption from rule 12d1–2(a) under the Act to the

extent necessary to permit any existing or future series of the Trusts and any other registered open-end investment company advised by the Adviser or any person controlling, controlled by or under common control with the Adviser that operates as a ''fund of funds'' (the ''Applicant Funds'') and invests in other Columbia funds in reliance on section 12(d)(1)(G) of the Act, and is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act, to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[1]

3. Consistent with its fiduciary obligations under the Act, each Applicant Fund's board of trustees (''Board'') will review the advisory fees charged by the Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Applicant Fund may invest.

**Applicants' Legal Analysis**

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Applicant Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Applicant Funds to invest in Other Investments. Applicants assert that permitting the Applicant Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

**Applicants' Condition**

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Applicant Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–21888 Filed 9–10–09; 8:45 am]

BILLING CODE 8010–01–P

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and conditions in the application.

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28897; File No. 812–13630]**

## Alpine Global Dynamic Dividend Fund, et al.; Notice of Application

September 4, 2009.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common shares as frequently as twelve times each year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred shares that such investment companies may issue.

**APPLICANTS:** Alpine Global Dynamic Dividend Fund (''AGD''), Alpine Total Dynamic Dividend Fund (''AOD''), Alpine Global Premier Properties Fund (''AWP'') and Alpine Woods Capital Investors, LLC (the ''Investment Adviser'').

**DATES:** *Filing Dates:* The application was filed on February 4, 2009 and amended on July 31, 2009 and September 1, 2009.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission

by 5:30 p.m. on September 29, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 2500 Westchester Avenue, Suite 215, Purchase, New York 10577.

**FOR FURTHER INFORMATION CONTACT:** Jill Ehrlich, Attorney Adviser, at (202) 551–6819, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

## Applicants' Representations

1. AGD, AOD and AWP, each a Delaware statutory trust, are closed-end management investment companies, registered under the Act.[1] The common shares of AGD, AOD and AWP are listed on the New York Stock Exchange. Applicants believe that the shareholders of each Fund are generally conservative, dividend-sensitive investors who desire current income periodically and may favor a fixed distribution policy. Although AGD, AOD and AWP have no current intention to do so, each is authorized to issue preferred shares.

2. The Investment Adviser is a Delaware limited liability company registered under the Investment Advisers Act of 1940 (''Advisers Act''). The Investment Adviser serves as investment adviser to AGD, AOD and AWP and is responsible for their overall management. Each Fund will be advised by an investment adviser that is registered under the Advisers Act.

3. Applicants state that, prior to the organizational meeting of each of AGD, AOD and AWP, held on June 23, 2006, December 18, 2006 and March 12, 2007, respectively, the board of trustees (the ''Board'') of each of AGD, AOD and AWP, including a majority of the members who are not ''interested persons'' of each Fund as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), reviewed information regarding the purpose and terms of the proposed distribution policy, the likely effects of such policy on each Fund's long-term total return (in relation to market price and net asset value (''NAV'') per share), the relationship between each Fund's distribution rate on its common shares under the policy and such Fund's total return (in relation to NAV per share). Applicants state that the Independent Trustees also considered what conflicts of interest the Investment Adviser, the affiliated persons of the Investment Adviser and each Fund might have with respect to the adoption or implementation of the proposed periodic distribution policy. Applicants further state that, after considering such information, the Board, including the Independent Trustees, of each of AGD, AOD and AWP approved the proposed periodic distribution policy with respect to such Fund's common shares (the ''Plan'') and determined that the Plan is consistent with such Fund's investment objectives and in the best interests of such Fund's common shareholders. Prior to implementing the Plan, the Board of each of AGD, AOD and AWP, including the Independent Trustees, will review the factors considered in connection with its approval of the Plan, as well as any changes in such factors since the date of its approval, and will confirm that the Plan is consistent with the Fund's investment objectives and policies and in the best interests of such Fund's common shareholders.

4. Applicants state that the purpose of the Plan of each of AGD, AOD and AWP is to permit such Fund to distribute over the course of each year, through monthly distributions as nearly equal as practicable and any required special distributions, an amount closely approximating the total taxable income of such Fund during such year and, if so determined by its Board, all or a portion of the returns of capital paid by portfolio securities to such Fund during such year. Applicants represent that, in accordance with the Plan of each Fund, the Fund would distribute to its common shareholders a fixed monthly amount, but reserves the right to distribute an amount equal to a fixed percentage of the market price or of the NAV per share of the Fund's common shares at a particular point in time, any of which may be adjusted from time to time. Applicants state that, under each Plan, the minimum annual distribution rate with respect to such Fund's common shares would be independent of the Fund's performance during any particular period, but would be expected to correlate with the Fund's performance over time. Applicants explain that, except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of the Fund's performance for the entire calendar year and to enable the Fund to comply with the distribution requirements of subchapter M of the Internal Revenue Code of 1986 (''Code'') for the calendar year, each distribution on the common shares would be at the stated rate then in effect.

5. Applicants state that at the meeting held on September 22, 2008, each Board adopted policies and procedures under rule 38a–1 that are reasonably designed to ensure that all notices required to be sent to the Fund's shareholders pursuant to section 19(a) of the Act, rule 19a–1 thereunder and condition 4 below (each a ''19(a) Notice'') include the disclosure required by rule 19a–1 and by condition 2(a) below, and that all other written communications by AGD, AOD or AWP or its agents regarding distributions under the Plan include the disclosure required by condition 3(a) below. Applicants state that each Board also adopted policies and procedures that require each Fund to keep records that demonstrate its compliance with all of the conditions of the order and that are necessary for such Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

## Applicants' Legal Analysis

1. Section 19(b) generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once each year. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental ''clean up'' distribution made pursuant to section 855 of the Code not exceeding 10% of the aggregate amount distributed for the year, plus one additional capital gain dividend made in whole or in part to

[1] AGD, AOD and AWP are the only closed-end investment companies that currently intend to rely on the order. Applicants request that the order also apply to each registered closed-end investment company that in the future: (a) Is advised by the Investment Adviser (including any successor in interest) or by any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Investment Adviser; and (b) complies with the terms and conditions of the application (collectively with AGD, AOD and AWP, ''Funds''). A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

avoid the excise tax under section 4982 of the Code.

2. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that one of the concerns leading to the enactment of section 19(b) and adoption of rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that a separate statement showing the sources of a distribution (e.g., estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital) accompany any distributions (or the confirmation of the reinvestment of distributions) estimated to be sourced in part from capital gains or capital. Applicants state that the same information is included in each Fund's annual report to shareholders and on its IRS Form 1099–DIV, which is sent to each common and preferred shareholder, if preferred shares are issued by one or more Funds, who received distributions during a particular year (including shareholders who have sold shares during the year).

4. Applicants further state that each of AGD, AOD and AWP will make the additional disclosures required by the conditions set forth below, and each of them has adopted compliance policies and procedures in accordance with rule 38a–1 under the Act to ensure that all required notices and disclosures are sent to shareholders. Applicants argue that rule 19a–1, the Plans, the Funds' compliance policies and the conditions listed below ensure that each Fund's shareholders would be provided sufficient information to understand that their periodic distributions are not tied to the Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Applicants also state that compliance with the Funds' compliance procedures and condition 3 set forth below will ensure that prospective shareholders and third parties are provided with the same information. Accordingly, applicants assert that continuing to subject the Funds to section 19(b) and rule 19b–1 would afford shareholders no additional protection.

5. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent improper fund share sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants assert that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as the Funds, which do not continuously distribute shares. According to applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a periodic distribution plan actually helps minimize the concern by avoiding, through monthly distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that common shares of closed-end funds that invest primarily in equity securities often trade in the marketplace at a discount to their NAVs. Applicants believe that this discount may be reduced if the Funds are permitted to pay relatively frequent dividends on their common shares at a consistent rate, whether or not those dividends contain an element of capital gain.

7. Applicants assert that the application of rule 19b–1 to the Plans actually could have inappropriate influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the adoption of a periodic distribution plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the Fund can pay all of its remaining distributions in accordance with rule 19b–1 and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants thus assert that the limitation on the number of capital gain dividends that a Fund may make with respect to any one year, may prevent the normal and efficient operation of a periodic distribution plan whenever that Fund's realized net long-term capital gains in any year exceed the total of the monthly distributions that may include such capital gains under the rule.

8. Applicants also assert that rule 19b–1 may force the fixed regular periodic distributions to be funded with returns of capital [2] (to the extent net investment income and realized short term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise would be available. To distribute all of a Fund's long-term capital gains within the limits in rule 19b–1, a Fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan or to retain and pay taxes on the excess amount. Applicants thus assert that the requested order would minimize these anomalous effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that Revenue Ruling 89–81 under the Code requires that a fund that has both common shares and preferred shares outstanding designate the types of income, e.g., investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with Revenue Ruling 89–81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred shares issued by a closed-end fund. Applicants assert that such distributions are either fixed or are determined in periodic auctions by reference to short-term interest rates rather than by reference to performance

[2] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

of the issuer, and Revenue Ruling 89–81 determines the proportion of such distributions that are comprised of the long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred shares, which entitle a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like debt securities, are priced based upon their liquidation value, dividend rate, credit quality, and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for and do not expect the liquidation value of their shares to change.

12. Applicants request an order pursuant to section 6(c) of the Act granting an exemption from section 19(b) of the Act and rule 19b–1 thereunder to permit each Fund to make periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common shares and as often as specified by or determined in accordance with the terms thereof in respect of the Fund's preferred shares.[3]

**Applicants' Conditions**

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

*1. Compliance Review and Reporting*

Each Fund's chief compliance officer will (a) report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether (i) the Fund and its Investment Adviser have complied with the conditions of the order and (ii) a material compliance matter (as defined in rule 38a–l(e)(2) under the Act) has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

*2. Disclosures to Fund Shareholders*

(a) Each 19(a) Notice disseminated to the holders of each Fund's common shares, in addition to the information required by section 19(a) and rule 19a–l:

(i) Will provide, in a tabular or graphical format:

(1) The amount of the distribution, on a per share basis, together with the amounts of such distribution amount, on a per share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(2) The fiscal year-to-date cumulative amount of distributions, on a per share basis, together with the amounts of such cumulative amount, on a per share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(3) The average annual total return in relation to the change in NAV per share for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month ended immediately prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(4) The cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

(ii) Will include the following disclosure:

(1) ''You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Plan'';

(2) ''The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income' ''[4] and

(3) ''The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099 DIV for the calendar year that will tell you how to report these distributions for Federal income tax purposes.''

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution;

(b) On the inside front cover of each report to shareholders under rule 30e–1 under the Act, the Fund will:

(i) Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

(ii) Include the disclosure required by condition 2(a)(ii)(1) above;

(iii) State, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to Fund shareholders; and

(iv) Describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

(c) Each report provided to shareholders under rule 30e–1 under the Act and each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

*3. Disclosure to Common Shareholders, Prospective Common Shareholders and Third Parties*

(a) Each Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, in any written communication (other than a communication on Form 1099) about the Plan or distributions under the Plan by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund common shareholder,

[3] In order to rely on the order, a future Fund must satisfy each of the foregoing representations except that such representations will be made in respect of actions by the Board of such future Fund and will be made at a future time.

[4] The disclosure in this condition 2(a)(ii)(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

prospective common shareholder or third-party information provider;

(b) Each Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, as an exhibit to its next filed Form N–CSR; and

(c) Each Fund will post prominently a statement on its (or the Investment Adviser's) Web site containing the information in each 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, and will maintain such information on such Web site for at least 24 months.

*4. Delivery of 19(a) Notices to Beneficial Owners*

If a broker, dealer, bank or other person (''financial intermediary'') holds common shares issued by a Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's shares; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

*5. Additional Board Determinations for Funds Whose Shares Trade at a Premium*

If:

(a) A Fund's common shares have traded on the stock exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

(b) A Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period;

then:

(i) At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Trustees:

(1) Will request and evaluate, and the Investment Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(2) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and is in the best interests of the Fund and its shareholders, after considering the information in condition 5(b)(i)(1) above; including, without limitation:

(A) Whether the Plan is accomplishing its purpose(s);

(B) The reasonably foreseeable material effects of the Plan on the Fund's long-term total return in relation to the market price and NAV of the Fund's common shares; and

(C) The Fund's current distribution rate, as described in condition 5(b) above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition 5(b), or such longer period as the Board deems appropriate; and

(3) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

(ii) The Board will record the information considered by it, including its consideration of the factors listed in condition 5(b)(i)(2) above, and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

*6. Public Offerings*

A Fund will not make a public offering of the Fund's common shares other than:

(a) A rights offering below NAV to holders of the Fund's common shares;

(b) An offering in connection with a dividend reinvestment plan merger, consolidation, acquisition, spin off or reorganization of the Fund; or

(c) An offering other than an offering described in conditions 6(a) and 6(b) above, provided that, with respect to such other offering:

(i) The Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,[5] expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date;[6] and

(ii) The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding preferred shares as such Fund may issue.

*7. Amendments to Rule 19b–1*

The requested order will expire on the effective date of any amendments to rule 19b-1 that provide relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common shares as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–21923 Filed 9–10–09; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28895; File No. 812–13535]**

## American Capital, Ltd.; Notice of Application

September 3, 2009.

**AGENCY:** Securities and Exchange Commission (the ''Commission'').

**ACTION:** Notice of an application for an order under section 61(a)(3)(B) of the

[5] If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

[6] If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

Investment Company Act of 1940 (the ''Act'').

**SUMMARY OF APPLICATION:** Applicant, American Capital, Ltd. (f/k/a American Capital Strategies, Ltd.) requests an order approving a proposal to grant certain stock options to directors who are not also employees or officers of the applicant (the ''Non-employee Directors'') under its 2008 Stock Option Plan (the ''Plan'').

**DATES:** *Filing Dates:* The application was filed on May 28, 2008 and amended on November 21, 2008, July 21, 2009, and August 28, 2009.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 29, 2009, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicant, 2 Bethesda Metro Center, 14th Floor, Bethesda, Maryland 20814.

**FOR FURTHER INFORMATION CONTACT:** Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Marilyn Mann, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

## Applicant's Representations

1. Applicant, a Delaware corporation, is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Applicant's primary business objectives are to increase its net operating income and net asset value by investing its assets in senior debt, subordinated debt, with and without detachable warrants, and equity of small to medium sized businesses with attractive current yields and potential for equity appreciation. Applicant's investment decisions are made either by its board of directors (the ''Board''), based on recommendations of the executive officers of applicant, or, for investments that meet certain objective criteria established by the Board, by the executive officers of applicant, under authority delegated by the Board. Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving its proposal to grant certain stock options under the Plan to its Non-employee Directors.[2] Applicant has a nine member Board with one current vacancy. Seven of the eight current members of the Board are not ''interested persons'' (as defined in section 2(a)(19) of the Act) of the applicant (''Disinterested Directors''). All of the current Non-employee Directors are Disinterested Directors. The Board approved the Plan at a meeting of the Board held on March 13, 2008 and applicant's stockholders approved the Plan at the annual meeting of stockholders held on May 19, 2008.[3]

3. Applicant's officers, employees, and Non-employee Directors are eligible to receive options under the Plan. Under the Plan, a maximum of 750,000 shares of applicant's common stock, in the aggregate, may be issued to Non-employee Directors and 93,750 shares of applicant's common stock may be issued to any one Non-employee Director. On the date that the Commission issues an order on the application (''Order Date''), each of the seven Non-employee Directors serving on the Board as of May 19, 2008 will be granted options to purchase 93,750 shares of applicant's common stock (the ''Initial Grants''), provided that the Non-employee Director is a member of the Board on the Order Date. The options issued under the Initial Grants will vest in three equal parts, the first part on the Order Date and the remaining two parts on May 19, 2010 and May 19, 2011. Any person who becomes a Non-employee Director after May 19, 2008 will be entitled to receive options to purchase 93,750 shares of applicant's common stock (the ''Other Grants''), if and to the extent that there are options available for grant to Non-employee Directors under the Plan. Each Other Grant will be effective on the later of the date such person becomes a Non-employee Director and the Order Date. The options issued under the Other Grants will vest in three equal parts on each of the first three anniversaries of the date such person becomes a Non-employee Director.

4. Under the terms of the Plan, the exercise price of an option will not be less than 100% of the current market value, or if no such market value exists, the current net asset value (''NAV'') per share of applicant's common stock on the date of the issuance of the option (''Fair Market Value'').[4] The Initial Grants will expire on May 19, 2018, and the Other Grants will expire on the tenth anniversary of the date the person becomes a Non-employee Director. Options granted under the Plan may not be assigned or transferred other than by will or the laws of descent and distribution. In the event of the death or disability of a Non-employee Director during such director's service, all such director's unexercised options will immediately become exercisable and may be exercised for a period of three years following the date of death (by such director's personal representative) or one year following the date of disability, but in no event after the respective expiration dates of such options. In the event of the termination of a Non-employee Director for cause,

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] The Non-employee Directors receive a $100,000 per year retainer payment and $3,000 for each Board or committee meeting or other designated Board-related meeting attended, and reimbursement for related expenses. Non-employee Directors who chair a committee of the Board receive an additional $10,000 retainer per year. Non-employee Directors who serve as directors on the boards of portfolio companies also receive an annual retainer from applicant set at $30,000 per board, in lieu of any payment from the portfolio company.

[3] At Board meetings held on November 13, 2008 and July 9, 2009, the Board approved amendments to the Plan. At each meeting, the Board determined that the applicable amendments did not require stockholder approval under Section 10 of the Plan or applicable law or NASDAQ listing requirements. Applicant acknowledges that the Commission is not taking a position as to whether applicant is required to seek stockholder approval for the amendments.

[4] Under the Plan, ''Fair Market Value'' is defined as follows: (a) If the common stock is listed on any established exchange or traded on the NASDAQ Global Select Market, the closing sales price of applicant's common stock as quoted on such exchange or market (or if the common stock is traded on multiple exchanges or markets, the exchange or market with the greatest volume of trading in the common stock) on the date on which an option is granted under the Plan, as reported in *The Wall Street Journal* or such other source as the Board deems reliable; or (b) in the absence of closing sales prices on such exchanges or markets for the common stock, the Fair Market Value will be determined in good faith by the Board, but in no event shall be less than the current NAV per share of common stock.

any unexercised options will terminate immediately. If a Non-employee Director's service is terminated for any reason other than by death, disability, or for cause, the options may be exercised within one year immediately following the date of termination, but in no event later than the expiration date of such options.

5. Applicant's officers and employees are eligible or have been eligible to receive options under stock option plans that exclude Non-employee Directors as participants (the ''Employee Plans''), applicant's 2006 stock option plan (the ''2006 Option Plan''), applicant's 2007 stock option plan (the ''2007 Option Plan''), and applicant's 2009 stock option plan (the ''2009 Option Plan''). Non-employee Directors have been eligible to receive options under applicant's two Disinterested Director stock option plans (the ''Disinterested Director Plans''), the 2006 Option Plan and the 2007 Option Plan (collectively, the 2009 Option Plan, the 2007 Option Plan, the 2006 Option Plan, the Disinterested Director Plans and the Employee Plans are the ''Other Plans''). As of June 30, 2009, applicant had 224,493,289 shares of common stock outstanding.[5] The 750,000 shares of applicant's common stock that may be issued to Non-employee Directors under the Plan represent 0.3% of applicant's outstanding voting securities as of June 30, 2009. As of June 30, 2009, the amount of voting securities that would result from the exercise of all outstanding options issued to applicant's directors, officers, and employees under the Other Plans and the Plan would be 37,107,027 shares of applicant's common stock, or 16.5% of applicant's outstanding voting securities. As of June 30, 2009, applicant had no outstanding warrants, options, or rights to purchase its voting securities other than the outstanding options issued to applicant's directors, officers, and employees under the Other Plans and the Plan.

**Applicant's Legal Analysis**

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current NAV upon the exercise of any option issued in accordance with section 61(a)(3). Section 61(a)(3)(B) provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market value exists, the current NAV of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to any executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that its proposal to grant certain stock options to Non-employee Directors under the Plan meets all the requirements of section 61(a)(3)(B). Applicant states that the Board is actively involved in the oversight of applicant's affairs and that it relies extensively on the judgment and experience of its Board. In addition to their duties as Board members generally, applicant states that the Non-employee Directors provide guidance and advice on operational issues, underwriting policies, credit policies, asset valuation and strategic direction, as well as serving on committees. Applicant believes that the availability of options under the Plan will provide significant at-risk incentives to Non-employee Directors to remain on the Board and devote their best efforts to ensure applicant's success. Applicant states that the options will provide a means for the Non-employee Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with those of applicant and its stockholders. Applicant asserts that by providing incentives such as options, applicant will be better able to maintain continuity in the Board's membership and to attract and retain the highly experienced, successful and dedicated business and professional people who are critical to applicant's success as a BDC.

4. As noted above, applicant states that the amount of voting securities that would result from the exercise of all outstanding options issued to applicant's directors, officers, and employees under the Other Plans and the Plan would be 37,107,027 shares of applicant's common stock, or 16.5% of applicant's outstanding voting securities, as of June 30, 2009. However, applicant represents that the maximum number of voting securities that would result from the exercise of all outstanding options issued and all options issuable to applicant's directors, officers, and employees under the Plan and the Other Plans would be 56,902,620 shares of applicant's common stock, or 25.3% of applicant's outstanding voting securities, as of June 30, 2009. Applicant states that to the extent the number of shares of common stock that would be issued upon the exercise of options issued under the Other Plans and the Plan exceeds 15% of applicant's outstanding voting securities, applicant will comply with the 20% limit in section 61(a)(3) of the Act.

5. Applicant asserts that, given the relatively small amount of common stock issuable to Non-employee Directors upon their exercise of options under the Plan, the exercise of such options would not, absent extraordinary circumstances, have a substantial dilutive effect on the NAV of applicant's common stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–21889 Filed 9–10–09; 8:45 am]

BILLING CODE 8010–01–P

[5] Applicant's common stock constitutes the only voting security of applicant currently outstanding.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60620; File No. SR–CHX–2009–10]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change To Add the Quote@CHX and Reprice@CHX Order Types to the Brokerplex System

September 3, 2009.

On July 23, 2009, Chicago Stock Exchange, Inc. (''CHX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt the Quote@CHX and Reprice@CHX order types for the Brokerplex order entry system. The proposed rule change was published for comment in the **Federal Register** on August 4, 2009.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

The Quote@CHX order type is designed to provide CHX Institutional Brokers with an additional method to enter displayable orders into the CHX Matching System. A Quote@CHX order will be priced within Brokerplex at a defined limit price, which is one minimum price increment from the relevant side of the National Best Bid and Offer (''NBBO'') at the time of order submission, before it is entered into the CHX Matching System as a limit order. The Reprice@CHX order type will enable an Institutional Broker to cancel an existing limit order residing in the CHX Matching System and replace it with an order generated in the same manner as a Quote@CHX order.

The Quote@CHX and Reprice@CHX functionality will only be available to Institutional Brokers entering orders into the Brokerplex system for submission to the CHX Matching System for display and execution. The CHX Matching System itself will not be eligible to receive these order types, but instead Brokerplex would convert the Quote@CHX and Reprice@CHX order types into limit orders for submission to the CHX Matching System. In addition, the use of Quote@CHX and Reprice@CHX will be optional, and entries for both order types will be rejected if the systematically generated price would be outside the customer's specified limit price. The Exchange's standard validations for locked and crossed markets will apply.

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, Section 6(b)(5) of the Act,[5] which requires that an exchange have rules designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

These Brokerplex order types are designed to help Institutional Brokers submit limit orders that they wish to display on the CHX Matching System, rather than execute against displayed bids or offers.[6] Institutional Brokers currently manually enter orders into the CHX Matching System through Brokerplex.[7] Under the proposed rule change, an Institutional Broker using the Quote@CHX or Reprice@CHX order types would have such orders automatically priced and entered into the CHX Matching System by Brokerplex.

The Commission believes that the Quote@CHX and Reprice@CHX order types provide an additional method for Institutional Brokers to submit customer orders to the CHX Matching System for display, and to seek price improvement for those orders. Therefore, the Commission believes that the proposal is consistent with the Act.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CHX–2009–10) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–21882 Filed 9–10–09; 8:45 am]

**BILLING CODE 8010–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60395 (July 28, 2008), 74 FR 38678 (''Notice'').

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] According to CHX, rapidly changing quotes in today's market environment often make it difficult to successfully post a bid or offer. *See* Notice, *supra* note 3, at 38678.

[7] *Id.* at 38678 n.3.

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60613; File No. SR–FINRA–2009–055]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 5210 (Publication of Transactions and Quotations) and 5220 (Offers at Stated Prices) Into the Consolidated Rulebook

September 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 3310 (Publication of Transactions and Quotations), NASD Rule 3320 (Offers at Stated Prices), IM–3310 (Manipulative and Deceptive Quotations) and IM–3320 (firmness of Quotations) as FINRA rules in the consolidated FINRA rulebook without material changes. The proposed rule change would combine NASD Rule 3310 and IM–3310 into FINRA Rule 5210 and would combine NASD Rule 3320 and IM–3320 into FINRA Rule 5220 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD Rule 3310 (Publication of Transactions and Quotations), NASD Rule 3320 (Offers at Stated Prices), IM–3310 (Manipulative and Deceptive Quotations) and IM–3320 (firmness of Quotations) with minor changes as FINRA rules in the Consolidated FINRA Rulebook.

**Proposed FINRA Rule 5210**

NASD Rule 3310 prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security. The rule also prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security.

IM–3310 provides that it would be inconsistent with NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade),[4] 3310 (Publications of Transactions and Quotations), and 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices)[5] for a member to: (1) Publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any securities transaction or of any purchase or sale of any security unless such member knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale, or (2) to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose.

NASD Rule 3310 was adopted on June 6, 1939, and there have been no subsequent amendments to the rule. IM–3310 was adopted in 1960 and also has not been amended since adoption. More recently, FINRA reminded members that directly enter (or that permit customers or non-members to enter) orders into trading systems that they are required to take steps to ensure that such orders are free of errors and are representative of bona fide transaction and quotation activity consistent with their obligations under NASD Rule 3310 and IM–3310.[6] Therefore, members have been reminded that they must have in place a supervisory system and written supervisory procedures reasonably designed to ensure that orders are not entered in error or in a manner inconsistent with FINRA rules, including NASD Rule 3310 and IM–3310.

FINRA is proposing to adopt the requirements set forth in NASD Rule 3310 and IM–3310 as FINRA Rule 5210 with minor changes to update the content and cross-references. Specifically, FINRA is proposing minor changes to delete the exception for nominal quotations that are clearly identified as such because, under current practice, nominal quotations are not published and a modifier does not exist to identify nominal quotations. In addition, FINRA is proposing to incorporate the substance of IM–3310 as Supplementary Material to FINRA Rule 5210 with minor changes to simplify and update the cross-references within the rule.[7]

*Proposed FINRA Rule 5220*

NASD Rule 3320 provides that no member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell. NASD Rule 3320 was adopted on June 6, 1939. There have been no subsequent amendments to the rule.

As adopted in 1965, related IM–3320 restricts ''backing away'' from quotations, which disrupts the normal operation of the over-the-counter market. IM–3320 provides that it shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade if a member ''backs away'' from its quotation.

In addition, the interpretive material provides that, in order to ensure the integrity of quotations, every member has an obligation to correctly identify the nature of its quotations when they are supplied to others. Further, each member furnishing quotations must ensure that it is adequately staffed to respond to inquiries during the normal business hours of such member. IM–3320 recognizes that members change inter-dealer quotations constantly in the course of trading, but further states that, under normal circumstances where the member is making a firm trading market in any security, it is expected at least to buy or sell a normal unit of trading in the quoted stock at its then prevailing quotations unless clearly designated as ''not firm'' or ''firm for less than a normal unit of trading'' when supplied by the member. In addition, IM–3320 recognizes that a member's quote may not be firm at times where contemporaneous transactions or substantial changes in inventory might require dealers to quote a ''subject market'' temporarily.

FINRA proposes to adopt NASD Rule 3320, without change, into the Consolidated FINRA Rulebook as FINRA Rule 5220 and to incorporate the substance of IM–3320, with minor changes, as Supplementary Material to FINRA Rule 5220. The minor changes to IM–3320 will: (1) Update terminology (*e.g.,* references to ''wire quotations'' and the ''National Quotation Bureau Sheets'') to reflect technological advancements and current practice

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[4] NASD Rule 2110 has been transferred into the Consolidated FINRA Rulebook as FINRA Rule 2010.

[5] NASD Rule 2120 has been transferred into the Consolidated FINRA Rulebook as FINRA Rule 2020.

[6] *See Notice to Members* 04–66 (NASD Reminds Member Firms of Their Obligations to Ensure the Accuracy and Integrity of Information Entered into Order-Routing and Execution Systems) (September 2004).

[7] As stated in SR–FINRA–2008–021, with the exception of the Arbitration Code, the Consolidated FINRA Rulebook will no longer contain Interpretive Materials (''IMs''); rather, the IMs either will become stand alone rules or will be integrated into existing rule text or moved to a ''Supplementary Material'' section at the end of a rule. (In some instances, an IM also may be eliminated as outdated or otherwise unnecessary.) The ''Supplementary Material'' will set forth the same type of legally binding guidance and additional information that IMs provide today and will be filed with the SEC. *See* Securities Exchange Act Release No. 58176 (July 16, 2008); 73 FR 42845 (July 23, 2008).

since the rule's enactment, and (2) update the ''subject market'' language to make it consistent with the language used in the SEC's Firm Quote Rule (Rule 602 of Regulation NMS), specifically that, if at the time an order for the purchase or sale of the quoted security is presented the member is in the process of effecting a transaction and immediately after the completion of such transaction communicates a revised quotation size, such member shall not be obligated to purchase or sell the quoted security in an amount greater than such revised quotation size.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that adopting the proposed rules as part of the Consolidated FINRA Rulebook will continue to enhance market quality by providing for increased reliability and usefulness of quotation information. FINRA notes that the proposed rules have been in operation for numerous decades and believes that they have since proven effective in achieving the statutory mandates.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–055 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–FINRA–2009–055.* This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–055 and should be submitted on or before October 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–21883 Filed 9–10–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60614; File No. SR–NYSE–2009–90]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Modify Rebates Payable to Designated Market Makers

September 2, 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 31, 2009, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its schedule of rebates payable to Designated Market Makers (''DMMs''), with effect from September 1, 2009. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to revise its schedule of rebates paid to DMMs for providing liquidity on the Exchange, with effect from September 1, 2009.

Currently, DMMs receive:

- A rebate of $0.0030 per share when adding liquidity in round lots of active securities (*i.e.,* securities with an average daily consolidated volume (''ADV'') in the previous month equal to or greater than 1,000,000 shares per month) (''More Active Securities'') if the More Active Security has a stock price of $1.00 or more; and
- A rebate of $0.0035 per share when adding liquidity in round lots of securities that have an ADV of less than 1,000,000 shares per month in the previous month (''Less Active Securities'') if the Less Active Security has a stock price of $1.00 or more. Each DMM also receives all of the market data quote revenue (the ''Quoting Share'') received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS with respect to any Less Active Security (regardless of whether the stock price exceeds $1.00) in any month in which the DMM meets the quoting requirement of Rule 104(a)(1)(A) for that specific security.

DMMs are entitled to the foregoing rebates when (i) posting displayed and non-displayed orders on Display Book, including s-quote and s-quote reserve orders; (ii) when providing liquidity on non-displayed interest using the Capital Commitment Schedule; or, prior to the implementation of the Capital Commitment Schedule, using the following message activities: price improvement, size improvement (PRIN FILL), matching away market quotes;[4] (iii) when executing trades in the crowd and at Liquidity Replenishment Points; and (iv) when providing liquidity on market-at-the-close and limit-at-the-close transactions. Rebates do not apply to executions at the open.

Commencing September 1, 2009, the schedule of rebates for DMMs described above will be replaced with a new schedule of rebates. Under the revised schedule of rebates, DMMs will receive:

- A rebate of $0.0025 per share when adding liquidity in round lots of More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM quotes at the National Best Bid or Offer (''NBBO'') in the applicable security at least 10% of the time in the applicable month (''More Active Securities Quoting Requirement'');
- A rebate of $0.0030 per share when adding liquidity in round lots of More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM meets both (i) the More Active Securities Quoting Requirement and (ii) the More Active Securities Quoted Size Ratio Requirement. A DMM will meet the ''More Active Securities Quoted Size Ratio Requirement'' when the DMM Quoted Size Ratio for an applicable month is 15% of the NYSE Quoted Size. The ''NYSE Quoted Size'' will be calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The ''DMM Quoted Size Ratio'' will be calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO;[5]
- A rebate of $0.0015 per share when adding liquidity in round lots of More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM does not meet the More Active Securities Quoting Requirement in the applicable security in the applicable month;
- A rebate of $0.0035 per share when adding liquidity in round lots of Less Active Securities, if the Less Active Security has a stock price of $1.00 or more and the DMM quotes at the NBBO in the applicable security at least 15% of the time in the applicable month (the ''Less Active Securities Quoting Requirement''). Each DMM will also receive all of the Quoting Share the Exchange receives from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS with respect to any Less Active Security (regardless of whether the stock price exceeds $1.00) in any month in which the DMM meets the Less Active Securities Quoting Requirement for that specific security); and
- A rebate of $0.0015 per share when adding liquidity in round lots of Less Active Securities if the Less Active Security has a stock price of $1.00 or more and the DMM does not meet the Less Active Securities Quoting Requirement in the applicable security in the applicable month.

Rebates under the new rebate schedule will be applied when (i) posting displayed and non-displayed orders on Display Book, including s-quote and s-quote reserve orders; (ii) when providing liquidity on non-displayed interest using the Capital Commitment Schedule, and (iii) when executing trades in the crowd and at Liquidity Replenishment Points.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6[7] of the Act in general and Section 6(b)(4) of the Act[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as providing credits to DMMs when they add liquidity to the market assists in the effective operation of the NYSE's market model. The removal of the reference to the types of messages for which the associated executions qualified for rebates prior to the implementation of the Capital Commitment Schedule is not a substantive change as the Capital Commitment Schedule has been implemented.

*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 purpose of the Act.

[4] The Capital Commitment Schedule has been implemented since this language was included in the Price List and the language is now moot.

[5] The following is an example of how the DMM Quoted Size will be calculated:

- The numerator is calculated as follows: if the DMM quotes at the NBBO for an average of 1000 shares for 60% of the time over the course of the month in stock ABC, then the numerator would be 600 shares = (1000 shares × 60% of the time over the course of the month);
- The denominator is calculated as follows: if the NYSE was at the NBBO for an average of 10,000 shares for 70% of the time over the course of the month, then the NYSE Quoted Size is 7,000 shares = (10,000 shares × 70% of the time over the course of the month);
- The DMM Quoted Size Ratio is 8.5% = 600/7000.

[6] When providing liquidity on market-at-the-close and limit-at-the-close transactions, DMMs will continue to receive a rebate of $0.0005 per share. Rebates do not apply to executions at the open.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [9] of the Act and Rule 19b–4(f)(2) [10] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–90 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–2009–90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–90 and should be submitted on or before October 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–21884 Filed 9–10–09; 8:45 am]

**BILLING CODE 8010–01–P**

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60621; File No. SR–NYSEArca–2009–77]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Options Rule 5.3(j)

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 19, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE Arca Rules [sic] 5.3(j) designates the listing and trading of options on equity index-linked securities (''Equity Index-Linked Securities''), commodity-linked securities (''Commodity-Linked Securities''), currency-linked securities (''Currency-Linked Securities''), fixed income index-linked securities (''Fixed Income Index-Linked Securities''), futures-linked securities (''Futures-Linked Securities'') and multifactor index-linked securities (''Multifactor Index-Linked Securities''), collectively known as ''Index-Linked Securities'' (as defined in NYSE Arca Equities Rule 5.2(j)(6)) that are principally traded on a national securities exchange and an ''NMS Stock'' (as defined in Rule 600 of Regulation NMS under the Securities and Exchange Act of 1934). The Exchange proposes to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities to include products linked to CBOE Volatility Index (VIX) Futures. This proposal is substantially similar to the previously approved NYSE Arca Equities Rule 5.2(j)(6)(v).[4]

Specifically, the Exchange proposes to add the CBOE Volatility Index (VIX) Futures to the definition of a Futures Reference Asset in NYSE Arca Rule 5.3(j)(1)(E).

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 34–58968 (November 17, 2008), 73 FR 64647 (SR–NYSEArca–2008–111).

underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing (''Underlying Index'' or ''Underlying Indexes''). Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

Currently, the Exchange will consider listing and trading options on Index-Linked Securities provided the Index-Linked Securities meet the criteria for underlying securities set forth in Rule 5.3(a)–(b).

Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Rule 5.3(a); or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset.[5] In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

Options on Index-Linked Securities will continue to be subject to all Exchange rules governing the trading of equity options. The current continuing or maintenance listing standards for options traded on NYSE Arca will continue to apply.

The VIX

The information in this filing relating to the VIX was taken from the Web site of the Chicago Board Options Exchange (the ''CBOE'').

The VIX was originally developed by the CBOE in 1993 and was calculated using S&P 100® Index options. The current methodology for the VIX was introduced by the CBOE in September 2003 and it is now an index that uses the quotes of certain S&P 500® Index (''SPX'') option series to derive a measure of the volatility of the U.S. equity market. The VIX measures market expectations of near term volatility conveyed by the prices of options on the SPX. It provides investors with up-to-the-minute market estimates of expected stock market volatility over the next 30 calendar days by extracting implied volatilities from real-time index option bid/ask quotes.

VIX Futures

Information regarding VIX Futures can be found on the Web site of the CBOE Futures Exchange (the ''CFE'').

The CFE began listing and trading VIX Futures since March 26, 2004 under the ticker symbol VX. VIX Futures trade between the hours of 8:30 a.m.—3:15 p.m. Central Time (Chicago Time).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (''Act'') in general, and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

*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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–77 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

[5] For the purposes of Rule 5.3(j), Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets and Multifactor Reference Assets, will be collectively referred to as ''Reference Assets,'' as defined in NYSE Arca Equities Rule 5.2(j)(6).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–77 and should be submitted on or before October 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–21886 Filed 9–10–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60619; File No. SR–NYSEArca–2009–79]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing of Five Fixed Income Funds of the PIMCO ETF Trust

September 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 27, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Exchange Act, NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), proposes to list and trade the shares of the following funds of the PIMCO ETF Trust (the ''Trust'') under NYSE Arca Equities Rule 8.600 (Managed Fund Shares): PIMCO Enhanced Short Maturity Strategy Fund, PIMCO Government Limited Maturity Strategy Fund, PIMCO Intermediate Municipal Bond Strategy Fund, PIMCO Prime Limited Maturity Strategy Fund, and PIMCO Short Term Municipal Bond Strategy Fund, (each a ''Fund'' and, collectively, the ''Funds''). The shares of the Funds are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyx.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade the Shares of the Funds under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.[3] Each of the Funds will be an actively managed exchange traded fund. The Shares will be offered by the Trust, which is a Delaware statutory trust. The Trust is registered with the Commission as an investment company.[4]

Description of the Shares and the Funds

Pacific Investment Management Company LLC (''PIMCO'') is the investment adviser (''Adviser'') to each Fund.[5] State Street Bank & Trust Co. is the custodian and transfer agent for the Funds. The Trust's Distributor is Allianz Global Investors Distributors LLC (the ''Distributor''), an indirect subsidiary of Allianz Global Investors of America L.P. (''AGI''), PIMCO's parent company. The Distributor is a registered broker-dealer.[6]

Commentary .07 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25). The Commission also previously approved listing and trading on the Exchange, or trading on the Exchange pursuant to unlisted trading privileges (''UTP'') of the following actively managed funds under Rule 8.600: Securities Exchange Act Release No. 57626 (April 4, 2008), 73 FR 19923 (April 11, 2008) (SR–NYSEArca–2008–28) (order approving trading on the Exchange pursuant to UTP of Bear Stearns Active ETF); Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); Securities Exchange Act Release No. 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR–NYSEArca–2009–22) (order approving Exchange listing and trading of Grail American Beacon Large Cap Value ETF); Securities Exchange Act Release No. 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving Exchange listing and trading of Dent Tactical ETF).

[4] *See* Registration Statement on Form N–1A for the Trust filed with the Securities and Exchange Commission on July 22, 2009 (File Nos. 333–155395 and 811–22250) (the ''Registration Statement''). The descriptions of the Funds and the Shares contained herein are based on information in the Registration Statement.

[5] The Exchange represents that the Adviser, as the investment adviser of the Funds, and its related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable Federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer (''CCO'') or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment advisor to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment advisor to provide investment advice to clients unless such investment advisor has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment advisor and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[6] The Funds have made application for an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Funds will comply with the Federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

information concerning the composition and/or changes to such Investment Company portfolio.[7] In addition, Commentary .07 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .07 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .07 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is affiliated with a broker-dealer, Allianz Global Investors Distributors LLC, and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

None of the Funds will invest in non-U.S. equity securities.

PIMCO Enhanced Short Maturity Strategy Fund

According to the Registration Statement, the Fund's investment objective is to seek maximum current income, consistent with preservation of capital and daily liquidity.[8]

The Fund seeks to achieve its investment objective by investing under normal circumstances at least 65% of its total assets in a diversified portfolio of Fixed Income Instruments[9] of varying maturities, which may be represented by forwards or derivatives such as options, futures contracts or swap agreements. The average portfolio duration of this Fund will vary based on PIMCO's forecast for interest rates and will normally not exceed one year. The dollar-weighted average portfolio maturity of the Fund is normally not expected to exceed three years.

According to the Registration Statement, the Fund primarily invests in U.S. dollar-denominated investment grade debt securities, rated Baa or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality. The Fund may invest, without limitation, in U.S. dollar-denominated fixed income securities and instruments that are economically tied to foreign (non-U.S.) countries.[10] The Fund may invest up to 5% of its total assets in U.S. dollar-denominated fixed-income securities and instruments that are economically tied to emerging market countries.

The Fund may invest, without limitation, in derivative instruments, such as options, futures contracts or swap agreements, or in mortgage- or asset-backed securities. The Fund may, without limitation, seek to obtain market exposure to the fixed income securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

As described in the Registration Statement, the Enhanced Short Maturity Strategy Fund also may invest in the following: up to 5% of its total assets in any combination of mortgage-related or other asset-backed interest-only, principal-only or inverse floater securities; fixed- and floating-rate loans, which investments generally will be in the form of loan participations and assignments of portions of such loans; U.S. dollar-denominated fixed income securities and instruments; and Brady Bonds, which are securities created through the exchange of existing commercial bank loans to sovereign entities for new obligations in connection with a debt restructuring.

The Fund may, but is not required to, use derivative instruments for risk management purposes or as part of its investment strategies. According to the Registration Statement, generally, derivatives are financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, currencies or currency exchange rates, commodities, and related indexes. Examples of derivative instruments include options contracts, futures contracts, options on futures contracts and swap agreements (including, but not limited to, credit default swaps and swaps on exchange traded funds).

PIMCO Government Limited Maturity Strategy Fund

According to the Registration Statement, the Fund's investment objective is to seek maximum current income, consistent with preservation of capital and daily liquidity. The Fund seeks to achieve its investment objective by investing under normal circumstances at least 80% of its assets in a diversified portfolio of fixed income securities that are issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises (''U.S. Government Securities''). Assets not invested in U.S. Government Securities may be invested in other types of Fixed Income Instruments.

According to the Registration Statement, the Fund's investments in Fixed Income Instruments are limited to those of investment grade U.S. dollar-denominated securities of U.S. issuers that are rated Aa or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality. The average portfolio duration of this Fund will vary based on PIMCO's forecast for interest

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the investment adviser is subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

[8] The investment objective of each Fund is non-fundamental and may be changed by the Board of Trustees without shareholder approval.

[9] According to the Registration Statement, ''Fixed Income Instruments,'' as used generally in the Registration Statement, includes:

- Securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises (''U.S. Government Securities'');
- Corporate debt securities of U.S. and non-U.S. issuers, including corporate commercial paper;
- Mortgage-backed and other asset-backed securities;
- Inflation-indexed bonds issued both by governments and corporations;
- Structured notes, including hybrid or ''indexed'' securities;
- Loan participations and assignments;
- Delayed funding loans and revolving credit facilities;
- Bank certificates of deposit, fixed time deposits and bankers' acceptances;
- Repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments;
- Debt securities issued by States or local governments and their agencies, authorities and other government-sponsored enterprises;
- Obligations of non-U.S. governments or their subdivisions, agencies and government-sponsored enterprises; and
- Obligations of international agencies or supranational entities.

[10] According to the Registration Statement, PIMCO generally considers an instrument to be economically tied to a non-U.S. country if the issuer is a foreign government (or any political subdivision, agency, authority or instrumentality of such government), or if the issuer is organized under the laws of a non-U.S. country. In the case of certain money market instruments, such instruments will be considered economically tied to a non-U.S. country if either the issuer or the guarantor of such money market instrument is organized under the laws of a non-U.S. country. With respect to derivative instruments, PIMCO generally considers such instruments to be economically tied to non-U.S. countries if the underlying assets are foreign currencies (or baskets or indexes of such currencies), or instruments or securities that are issued by foreign governments or issuers organized under the laws of a non-U.S. country (or if the underlying assets are certain money market instruments, if either the issuer or the guarantor of such money market instruments is organized under the laws of a non-U.S. country).

rates and will normally not exceed one year. The Fund may only invest in securities that mature within two years from the date of purchase.

The Fund may, without limitation, seek to obtain market exposure to the fixed income securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

PIMCO Intermediate Municipal Bond Strategy Fund

According to the Registration Statement, the Fund's investment objective is to seek attractive tax-exempt income, consistent with preservation of capital. The Fund seeks to achieve its investment objective by investing under normal circumstances at least 80% of its assets in a diversified portfolio of debt securities whose interest is, in the opinion of bond counsel for the issuer at the time of issuance, exempt from Federal income tax (''Municipal Bonds''). Municipal Bonds generally are issued by or on behalf of States and local governments and their agencies, authorities and other instrumentalities.

According to the Registration Statement, the Fund does not intend to invest in securities whose interest is subject to the Federal alternative minimum tax. The Fund may only invest in U.S. dollar-denominated investment grade debt securities. The Fund may invest 25% or more of its total assets in Municipal Bonds that finance similar projects, such as those relating to education, health care, housing, transportation, and utilities, and 25% or more of its total assets in industrial development bonds. The average portfolio duration of this Fund normally varies from three to eight years, based on PIMCO's forecast for interest rates. The portfolio manager focuses on bonds with the potential to offer attractive current income, typically looking for bonds that can provide consistently attractive current yields or that are trading at competitive market prices.

The Fund may, without limitation, seek to obtain market exposure to the fixed income securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

PIMCO Prime Limited Maturity Strategy Fund

According to the Registration Statement, the Fund's investment objective is to seek maximum current income, consistent with preservation of capital and daily liquidity. The Fund seeks to achieve its investment objective by investing under normal circumstances at least 65% of its total assets in a diversified portfolio of fixed income securities of varying maturities. The Fund may only invest in U.S. dollar-denominated securities that mature within 397 days from the date of purchase or floating rate U.S. government agency securities that mature within two years from the date of purchase. The average portfolio duration of this Fund will vary based on PIMCO's forecast for interest rates and will normally not exceed 90 days.

According to the Registration Statement, the Fund primarily invests in U.S. dollar-denominated investment grade debt securities, rated A or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality.

The Fund may, without limitation, seek to obtain market exposure to the fixed income securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

PIMCO Short Term Municipal Bond Strategy Fund

According to the Registration Statement, the Fund's investment objective is to seek attractive tax-exempt income, consistent with preservation of capital. The Fund seeks to achieve its investment objective by investing under normal circumstances at least 80% of its assets in a diversified portfolio of Municipal Bonds.

According to the Registration Statement, the Fund does not intend to invest in securities whose interest is subject to the Federal alternative minimum tax. The Fund may only invest in U.S. dollar-denominated investment grade debt securities. The Fund may invest 25% or more of its total assets in Municipal Bonds that finance similar projects, such as those relating to education, health care, housing, transportation, and utilities, and 25% or more of its total assets in industrial development bonds. The average portfolio duration of this Fund varies based on PIMCO's forecast for interest rates and under normal market conditions is not expected to exceed three years. The dollar-weighted average portfolio maturity of the Fund is normally not expected to exceed three years. The portfolio manager focuses on bonds with the potential to offer attractive current income, typically looking for bonds that can provide consistently attractive current yields or that are trading at competitive market prices.

The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

Each Fund may enter into repurchase agreements, in which the Fund purchases a security from a bank or broker-dealer, which agrees to repurchase the security at the Fund's cost plus interest within a specified time. In addition, each Fund may enter into reverse repurchase agreements and dollar rolls; may purchase securities which it is eligible to purchase on a when-issued basis; may purchase and sell such securities for delayed delivery and may make contracts to purchase such securities for a fixed price at a future date beyond normal settlement time (forward commitments); may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange traded funds; may invest securities lending collateral in one or more money market funds to the extent permitted by Rule 12d1–1 under the 1940 Act; and may invest up to 15% of its net assets in illiquid securities.[11]

The Shares

According to the Registration Statement, Shares of a Fund that trade in the secondary market are ''created'' at NAV[12] by Authorized Participants only in block-size Creation Units of 100,000 shares or multiples thereof. Each Authorized Participant enters into an authorized participant agreement with the Funds' Distributor. A creation transaction, which is subject to acceptance by the transfer agent, takes place when an Authorized Participant deposits into a Fund a specified amount of cash and/or a portfolio of securities specified by such Fund in exchange for a specified number of Creation Units.

Similarly, Shares can be redeemed only in Creation Units, generally in-kind

[11] According to the Registration Statement, the term ''illiquid securities'' for this purpose means securities that cannot be disposed of within seven days in the ordinary course of business at approximately the amount at which a Fund has valued the securities.

[12] The NAV of each Fund's shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time (the ''NAV Calculation Time'') on any Business Day as defined in the Registration Statement. NAV per share is calculated by dividing a Fund's net assets by the number of Fund shares outstanding. For more information regarding the valuation of Fund investments in calculating a Fund's NAV, *see* the Registration Statement.

for a portfolio of securities held by a Fund and/or for a specified amount of cash. Except when aggregated in Creation Units, Shares are not redeemable by a Fund. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received. Requirements as to the timing and form of orders are described in the authorized participant agreement.

PIMCO, through the National Securities Clearing Corporation (''NSCC''), makes available on each Business Day, prior to the opening of business (subject to amendments) on the Exchange (currently 9:30 a.m., Eastern time), the identity and the required number of shares of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information at the end of the previous Business Day).

Creations and redemptions must be made by an Authorized Participant or through a firm that is either a member of the Continuous Net Settlement System of the NSCC or a DTC participant, and in each case, must have executed an agreement with the Distributor with respect to creations and redemptions of Creation Unit aggregations.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Availability of Information

The Funds' Web site (*http://www.pimcoetfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for each Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Funds: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[13] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session[14] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') held by the Funds that will form the basis for the Funds' calculation of NAV at the end of the business day.[15] The Web site and information will be publicly available at no charge.

In addition, for each Fund, an estimated value, defined in NYSE Arca Equities Rule 8.600 as the ''Portfolio Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and disseminated by the Exchange at least every 15 seconds during the Core Trading Session on the Exchange through the facilities of the Consolidated Tape Association. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Funds' Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov.*

Initial and Continued Listing

The Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Shares must be in compliance with Rule 10A–3[16] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value per Share will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Shares of the Funds will be halted if the ''circuit breaker'' parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading

[13] The Bid/Ask Price of each Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by each Fund and its service providers.

[14] The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

[15] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, each Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[16] *See* 17 CFR 240.10A–3.

increment for Shares on the Exchange will be $0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which includes Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of ISG.[17]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[18] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.600 are intended to protect investors and the public interest.

*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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–79 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–79. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

[17] For a list of the current members of ISG, *see http://www.isgportal.org.* The Exchange notes that not all of the components of the Disclosed Portfolio for the Funds may trade on exchanges that are members of ISG.

[18] 15 U.S.C. 78f(b)(5).

Number SR–NYSEArca–2009–79 and should be submitted on or before September 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–21908 Filed 9–10–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60625; File No. SR–CBOE–2009–066]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit CBOE To List Series That Are Restricted to Closing Transactions if Such Series Are Listed and Restricted To Closing Transactions on Another Exchange

September 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 3, 2009, Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

CBOE proposes to amend Interpretation and Policy .12 to Rule 5.4 to permit the Exchange to list series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

### 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 purpose of this proposed rule change is to amend Interpretation and Policy .12 to Rule 5.4 to permit the Exchange to list series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange.

The impetus for this filing is a customer request for the Exchange to list a series that was previously delisted by the Exchange so that the customer may close an existing position in the delisted series. Specifically, on August 27, 2009, CBOE delisted the January 2010 7 El Paso, Corp. (EPY) strike.[5] Currently, that series is listed on one other exchange and is restricted to closing transactions only. On September 1, 2009, the Exchange received a customer request to re-list the January 2010 7 EPY strike because the customer wants to close out their position on CBOE, and not on the other exchange that currently lists the restricted January 2010 7 EPY strike. The Exchange wants to accommodate the customer and is therefore proposing to amend Interpretation and Policy .12 to Rule 5.4.

Specifically, the Exchange proposes to add new subparagraph (b) to Interpretation and Policy .12 to Rule 5.4. to provide that if an option series is listed but restricted to closing transactions on another national securities exchange, the Exchange may list such series (even if such series would not otherwise be eligible for listing under the Exchange's Rules), which shall also be restricted to closing transactions on the Exchange.[6] Similar to series that no longer meet the Exchange's criteria for continued listing, (i) opening transactions by market makers executed to accommodate closing transactions of other market participants, and (ii) opening transactions by CBOE member organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with CBOE Rule 6.74(b) or (d) will be permitted in any restricted series listed pursuant to Rule 5.4.12(b).[7] No restrictions will be in place with respect to the exercise of any restricted series.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements provided under Section 6(b)(5) of the Act,[8] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. Permitting the Exchange to accommodate a customer request will encourage competition and not harm investors or the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

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)

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] This series was inadvertently listed within $0.50 of an existing strike and was therefore delisted. *See* Rule 5.5.01(a)(2).

[6] The parenthetical text is being proposed to eliminate ambiguity about the Exchange's ability to list a restricted series pursuant to proposed Rule 5.4.12(b) in the event other Exchange Rules would otherwise prohibit the listing of that series.

[7] *See* Rule 5.4.

[8] 15 U.S.C. 78f(b)(5).

of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange immediately to provide investors with an additional venue to close their existing open positions. The Commission notes further that the Exchange would be permitted to list the restricted series solely for the purpose of closing transactions as long as the restricted series is listed on another national securities exchange. For this reason, the Commission designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–066 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–066. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–066 and should be submitted on or before October 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–21909 Filed 9–10–09; 8:45 am]

**BILLING CODE 8010–01–P**

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60622; File No. SR–NYSEAmex–2009–59]**

## Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending NYSE Amex Options Rule 915

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 19, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise NYSE Amex Rule 915 to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE Amex Rule 915, Commentary .11 designates the listing and trading of options on equity index-linked securities (''Equity Index-Linked Securities''), commodity-linked securities (''Commodity-Linked Securities''), currency-linked securities (''Currency-Linked Securities''), fixed income index-linked securities (''Fixed Income Index-Linked Securities''), futures-linked securities (''Futures-Linked Securities'') and multifactor index-linked securities (''Multifactor Index-Linked Securities''), collectively known as ''Index-Linked Securities'' (as defined in NYSE Amex Company Guide Section 107(H)) that are principally traded on a national securities exchange and an ''NMS Stock'' (as defined in Rule 600 of Regulation NMS under the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Securities and Exchange Act of 1934). The Exchange proposes to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities to include products linked to CBOE Volatility Index (VIX) Futures. This proposal is substantially similar to the previously approved NYSE Arca Equities Rule 5.2(j)(6)(v).[4]

Specifically, the Exchange proposes to add the CBOE Volatility Index (VIX) Futures to the definition of a Futures Reference Asset in NYSE Amex Rule 915 Commentary .11(5).

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing (''Underlying Index'' or ''Underlying Indexes''). Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

Currently, the Exchange will consider listing and trading options on Index-Linked Securities provided the Index-Linked Securities meet the criteria for underlying securities set forth in Rule 915 Commentary .01.

Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Rule 915 Commentary .01; or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset.[5] In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

Options on Index-Linked Securities will continue to be subject to all Exchange rules governing the trading of equity options. The current continuing or maintenance listing standards for options traded on NYSE Amex will continue to apply.

The VIX

The information in this filing relating to the VIX was taken from the Web site of the Chicago Board Options Exchange (the ''CBOE'').

The VIX was originally developed by the CBOE in 1993 and was calculated using S&P 100® Index options. The current methodology for the VIX was introduced by the CBOE in September 2003 and it is now an index that uses the quotes of certain S&P 500® Index (''SPX'') option series to derive a measure of the volatility of the U.S. equity market. The VIX measures market expectations of near term volatility conveyed by the prices of options on the SPX. It provides investors with up-to-the-minute market estimates of expected stock market volatility over the next 30 calendar days by extracting implied volatilities from real-time index option bid/ask quotes.

VIX Futures

Information regarding VIX Futures can be found on the Web site of the CBOE Futures Exchange (the ''CFE'').

The CFE began listing and trading VIX Futures since March 26, 2004 under the ticker symbol VX. VIX Futures trade between the hours of 8:30 a.m.–3:15 p.m. Central Time (Chicago Time).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (''Act'') in general, and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

*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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov. Please include File Number SR–NYSEAmex–2009–59 on the subject line.*

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NYSEAmex–2009–59.* 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

[4] *See* Securities Exchange Act Release No. 34–58968 (November 17, 2008), 73 FR 64647 (SR–NYSEArca–2008–111).

[5] For the purposes of Rule 915 Commentary .11, Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets and Combination Reference Assets, will be collectively referred to as ''Reference Assets'', as defined in ''Reference Asset'' as defined in Sections 107D, 107E, 107F, 107G, 107H and 107I, respectively, of the NYSE Amex Options Company Guide.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–NYSEAmex–2009–59* and should be submitted on or before October 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–21887 Filed 9–10–09; 8:45 am]

**BILLING CODE 8010–01–P**

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60624; File No. SR–FINRA–2009–057]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Section 1(c) of Schedule A to the FINRA By-Laws To Amend the Personnel Assessment and Gross Income Assessment

September 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 20, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to change Section 1(c) of Schedule A to the FINRA By-Laws (''Schedule A'') to amend the Personnel Assessment and Gross Income Assessment paid by each FINRA member.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA's primary member regulatory pricing structure consists of the following fees: the Personnel Assessment (''PA''); the Gross Income Assessment (''GIA''); the Trading Activity Fee; and the Branch Office Assessment. These fees are used to fund FINRA's regulatory activities, including rulemaking and FINRA's examination and enforcement programs.

The proposed rule change would amend the PA and GIA to achieve a more consistent and predictable funding stream to carry out FINRA's regulatory mandate. The economic and industry downturns experienced in 2008 and 2009 have strained FINRA's resources, yet its regulatory responsibilities remain constant and its programs robust. FINRA believes the proposed rule change is needed to stabilize its revenues and provide protection against future industry downturns.

To those ends, the proposed rule change first would increase the PA for all members. The PA is currently assessed on a three-tiered rate structure: members with one to five registered representatives and principals are assessed $75 for each such registered person; 6–25 registered persons, $70 each; and 26 or more registered persons, $65 each. The proposed rule change would increase those rates to $150, $140 and $130, respectively, based on the same tiered structure. This proposal would represent the first PA rate increase in over five years. Moreover, given the correlation between the cost of FINRA's regulatory programs and the number of registered persons within a firm, FINRA notes that the population of registered persons has remained fairly stable, even throughout the recent economic downturn.[3] Accordingly, FINRA believes an increase of the PA is both a fair and appropriate means to achieve a more consistent and reliable foundation to fund its regulatory operations.

Even with the proposed increase of the PA, the GIA remains the most important component of FINRA's regulatory funding. The GIA is currently assessed through a seven-tier rate structure with a minimum GIA of $1,200.00. Under the existing GIA rate structure, members are required to pay an annual GIA as follows:

(1) $1,200.00 on annual gross revenue up to $1 million;

(2) 0.1215% of annual gross revenue greater than $1 million up to $25 million;

(3) 0.2599% of annual gross revenue greater than $25 million up to $50 million;

(4) 0.0518% of annual gross revenue greater than $50 million up to $100 million;

(5) 0.0365% of annual gross revenue greater than $100 million up to $5 billion;

(6) 0.0397% of annual gross revenue greater than $5 billion up to $25 billion; and

(7) 0.0855% of annual gross revenue greater than $25 billion.

For 2010, the current year GIA would be subject to the cap set forth in *Regulatory Notice* 08–07 (February 2008), which describes the new funding structure that resulted from the consolidation of NASD's and the New York Stock Exchange's member regulation operations. FINRA states in the *Notice* that it will apply a ten-percent cap on any increase or decrease to a firm's 2010 current year GIA resulting from the new pricing structure implemented in January 2008.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For example, FINRA records show that since 2000, the average number of registered persons per year has been approximately 667,680 and that for each of the past three years the population has been 669,626 (2009), 676,927 (2008) and 662,742 (2007) (based on numbers at the end of the preceding calendar year).

Since the GIA is assessed based on a member's annual gross revenue for the preceding calendar year,[4] FINRA's revenues derived from the GIA are subject to the year-to-year volatility of member revenues. In years where industry revenues are significantly down, FINRA's operating revenues can drop precipitously: in 2009, for example, GIA revenues are down approximately 37 percent due to 2008 fourth quarter write-offs taken by members, particularly the largest securities firms.

The proposed rule change thus seeks to ameliorate this vulnerability by not only shifting some of FINRA's revenue generation to the more consistent PA stream, but also by smoothing out the volatility inherent in the GIA. To that end, the proposed rule change would further amend Schedule A to assess a GIA of the greater of (1) the amount that would be the GIA based on the existing rate structure (''current year GIA'') or (2) a three-year average of the GIA to be calculated by adding the current year GIA plus the GIA assessed on the member over the previous two calendar years, divided by three. For a newer firm that has only been assessed in the prior year, FINRA would compare the current year GIA to the two-year average and assess the greater amount. The existing GIA rate structure and phase-in implementation through 2010 would remain the same.[5] Accordingly, the proposed rule change would preserve the current rate structure, while building a buffer against industry downturns. FINRA notes that it has a long history of providing rebates to members when revenues exceed the expenditures necessary to discharge its regulatory obligations and is committed to continuing that practice in the future.

FINRA believes the proposed rule change will stabilize its operating cash flows by augmenting revenues based on the registered person population, where FINRA's costs are more closely aligned, and reducing dependency on, and exposure to, less predictable industry revenues. FINRA estimates that if the proposed rule change had been in effect for 2009, it would have replaced about 90% of the revenue shortfall that resulted primarily from the significant drop in GIA revenues. In general, those replacement revenues would come from several larger firms whose steep income declines in 2008 primarily account for FINRA's current revenue deficit.

As noted in Item 2 of this filing, FINRA will announce the proposed rule change and subsequent approval in a *Regulatory Notice.* The proposed rule change will become effective January 1, 2010.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[6] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–057 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–057 and should be submitted on or before October 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

*Deputy Secretary.*

[FR Doc. E9–21885 Filed 9–10–09; 8:45 am]

BILLING CODE 8010–01–P

[4] Gross revenue for assessment purposes is set out in Section 2 of Schedule A, which defines gross revenue as total income as reported on FOCUS form Part II or IIA excluding commodities income.

[5] The actual amount of GIA assessed in any given year—e.g., the current year GIA (including a cap, if applicable) or the three-year average—will be used to calculate subsequent three-year average determinations.

[6] 15 U.S.C. 78*o*–3(b)(5).

[7] 17 CFR 200.30–3(a)(12).

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS382]**

## WTO Dispute Settlement Proceeding Regarding United States—Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice From Brazil

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (''USTR'') is providing notice that on August 20, 2009, Brazil requested the establishment of a panel under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') concerning certain issues relating to the imposition by the United States of antidumping measures on certain orange juice from Brazil. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS382/4. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before October 25, 2009, to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted electronically to *http://www.regulations.gov*, docket number USTR–2008–0044. If you are unable to provide submissions by *http://www.regulations.gov*, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

**FOR FURTHER INFORMATION CONTACT:** Leigh Bacon, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–5859.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 2527(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that Brazil has requested the establishment of a dispute settlement panel pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such a panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

### Major Issues Raised by Brazil

In its request for establishment of a panel, Brazil challenges what it refers to as the ''methodology of 'model zeroing' and/or U.S. 'zeroing procedures' '' in the Department of Commerce's anti-dumping duty investigation of certain orange juice from Brazil,[1] the ''methodology of 'simple zeroing' and/or U.S. 'zeroing procedures' in the first and second administrative reviews of the anti-dumping duty order on certain orange juice from Brazil,[2] and the ''continued use of the U.S. 'zeroing procedures' in successive anti-dumping proceedings, in relation to the anti-dumping duty order issued in respect of imports of certain orange juice from Brazil.'' Brazil alleges inconsistencies with the obligations of the United States under Articles 2.1, 2.4.2, 2.4, 9.3, and 18.4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, Articles II:1(a), II:1(b), VI:1, and VI:2 of the *General Agreement on Tariffs and Trade 1994,* and Article XVI:4 of the WTO Agreement.

### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2008–0044. If you are unable to provide submissions by *www.regulations.gov*, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov*, enter docket number USTR–2008–0044 on the home page and click ''go''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.) The *http://www.regulations.gov* site provides the option of providing comments by filling in a ''General Comments'' field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''*See* attached'' in the ''General Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov*. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov*. The non-confidential summary will be placed in

[1] *See* Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice From Brazil, 71 FR 2183 (Jan. 13, 2006); Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Orange Juice From Brazil, 71 FR 8841 (Feb. 21, 2009).

[2] *See* Certain Orange Juice From Brazil: Final Results and Partial Rescission of the Antidumping Duty Administrative Review, 73 FR 46584 (Aug. 11, 2008); Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 40167 (Aug. 11, 2009).

the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding, accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments may be viewed on the *http://www.regulations.gov* Web site by entering docket number USTR–2008–0044 in the search field on the home page.

**Daniel Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. E9–21945 Filed 9–10–09; 8:45 am]

BILLING CODE 3190–W9–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Availability of Draft Technical Standard Order (TSO)–C166b for Extended Squitter Automatic Dependent Surveillance-Broadcast and Traffic Information Service-Broadcast Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz)

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation.

**ACTION:** Notice of availability and request for comment.

**SUMMARY:** The FAA is announcing the availability of and requesting comment on proposed TSO–C166b. The Avionic Systems Branch of the Aircraft Engineering Division, Aircraft Certification Service, FAA has presented a proposed revision of existing TSO–C166a. RTCA, Inc. Special Committee (SC)–186 is revising RTCA Document DO–260A, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information-Broadcast (TIS–B), which will become the Minimum Performance Standard (MPS) for the proposed TSO–166b. Proposed TSO–C166b can be found at *http://www.faa.gov/aircraft/draft_docs/*. Comments may be filed electronically following instructions on the webpage. Comments may also be filed using the addresses provided below.

**DATES:** Comments must be received no later than October 9, 2009.

**ADDRESSES:** Comments may be submitted by the above deadline to Mr. Chip Bulger, AIR–130, Orville Wright Bldg. (FOB10A), 800 Independence Avenue, SW., Washington, DC 20591; facsimile: 202–385–4651.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chip Bulger, Avionics Systems Branch, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 470 L'Enfant Plaza, SW., Washington, DC 20591; telephone 202–385–4882; *chip.bulger@faa.gov.*

Issued in Washington, DC on September 8, 2009.

**David W. Hempe,**

*Manager, Aircraft Engineering Division.*

[FR Doc. E9–21953 Filed 9–10–09; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Availability of Draft Technical Standard Order (TSO)–C154c for Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B) Equipment Operating on Frequency of 978 MHz

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation.

**ACTION:** Notice of availability and request for comment.

**SUMMARY:** The FAA is announcing the availability of and requesting comment on proposed TSO–C154c. The Avionic Systems Branch of the Aircraft Engineering Division, Aircraft Certification Service, FAA has presented a proposed revision of existing TSO–C154b. RTCA, Inc. Special Committee (SC)–186 is revising RTCA Document DO–282A, Minimum Operational Performance Standards for Universal Access Transceiver (UAT) Automatic Dependent Surveillance Broadcast (ADS–B), which will become the Minimum Performance Standard (MPS) for the proposed TSO–154c. Proposed TSO–C154c can be found at *http://www.faa.gov/aircraft/draft_docs/*. Comments may be filed electronically following instructions on the Web page. Comments may also be filed using the addresses provided below.

**DATES:** Comments must be received no later than October 9, 2009.

**ADDRESSES:** Comments may be submitted by the above deadline to Mr. Chip Bulger, AIR–130, Orville Wright Bldg. (FOB10A), 800 Independence Avenue, SW., Washington, DC 20591; facsimile: 202–385–4651.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chip Bulger, Avionics Systems Branch, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 470 L'Enfant Plaza, SW., Washington, DC 20591; telephone 202–385–4882; *chip.bulger@faa.gov*.

Issued in Washington, DC on September 8, 2009.

**David W. Hempe,**

*Manager, Aircraft Engineering Division.*

[FR Doc. E9–21951 Filed 9–10–09; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No.: PE–2009–39]**

### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before October 1, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2009–0623 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Leslie Taylor, (816) 329–4134.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 4, 2009.

**Ida M. Klepper,**

*Acting Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2009–0623.

*Petitioner:* Cirrus Design Corporation.

*Section of 14 CFR Affected:* 14 CFR 23.562(b) and 23.785(a).

*Description of Relief Sought:* Cirrus requests an exemption to the occupant weights specified in §§ 23.562(b) and 23.785(a) for its Model SF50 aircraft, regarding optional small occupant passenger seats designed for passengers weighing no more than 90 pounds. These seats can be made safer if designed for a lower occupant weight. However, part 23 does not provide sufficient regulation for seats designed specifically for small occupants.

[FR Doc. E9–21848 Filed 9–10–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Ex Parte No. 519 (Sub-No. 5)]**

### Renewal of National Grain Car Council

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Intent to renew charter.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended 5 U.S.C., App. (FACA), notice is hereby given that the Surface Transportation Board intends to renew the charter of the National Grain Car Council (NGCC).

**ADDRESSES:** A copy of the charter is available at the Library of the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, and on the Board's Web site at *http://www.stb.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Tom Brugman, Designated Federal Official, at (202) 245–0281. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

**SUPPLEMENTARY INFORMATION:** The NGCC functions as a continuing working group to facilitate private-sector solutions and recommendations to the STB on matters affecting grain transportation. The NGCC functions solely as an advisory body, and complies with the provisions of FACA.

The NGCC consists of approximately 40 members, excluding the governmental representatives. Members comprise a *balanced* representation of executives knowledgeable in the transportation of grain, including not less than 14 members from the Class I railroads (one marketing and one car management representative from each Class I), 7 representatives from Class II and III carriers, 14 representatives from grain shippers and receivers, and 5 representatives from private car owners and car manufacturers. The Chairman and Vice Chairman of the Board are ex officio (non-voting) members of the NGCC.

The NGCC meets at least annually, and meetings are open to the public, consistent with the Government in the Sunshine Act, Public Law 94–409.

Further information about the NGCC is available on the Board's Web site at *http://www.stb.dot.gov* and at the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: September 4, 2009.

**Kulunie L. Cannon,**

*Clearance Clerk.*

[FR Doc. E9–21647 Filed 9–10–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 4, 2009.

The Department of the Treasury is planning to submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before November 10, 2009 to be assured of consideration.

### Office of Financial Stability (OFS)

*OMB Number:* 1505–0218.

*Type of Review:* Extension.

*Title:* Application for Grants to States for Low-Income Housing Projects in lieu of Tax Credits.

*Description:* Authorized under the American Recovery and Reinvestment Act (ARRA), hereafter Recovery Act of 2009 (Pub. L. 111–5), the Department of the Treasury is implementing several provisions of the Act, more specifically Division B—Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions. Among these components is a program which requires Treasury to make payments, in lieu of a tax credit, to state housing credit agencies. State housing credit agencies use the funds to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. The collection of information is necessary to properly identify recipients and determine the appropriate amount of funding. The information will be used to (1) identify eligible recipients; (2) determine the appropriate amount of funding; (3) ensure compliance with applicable laws; and (4) report on the effectiveness of the program.

*Respondents:* Individuals or Households.

*Estimated Total Reporting Burden:* 14 hours.

*OMB Number:* 1505–0221.

*Type of Review:* Extension.

*Title:* Application for Grants for Reimbursement of Specified Energy Property Costs.

*Description:* Authorized under the American Recovery and Reinvestment act (ARRA), hereafter Recovery Act, the Department of the Treasury is implementing several provisions of the Act, specifically Division B—Tax, Unemployment, Health, Fiscal Relief, and Other Provisions. Among these components is a program that requires Treasury to make payments, in lieu of a tax credit, to persons who place in service qualified renewable energy property. The collection of information is necessary to identify recipients and evaluate whether or not the property is qualified.

*Respondents:* State, Local, or Tribal Governments.

*Estimated Total Reporting Burden:* 2,000 hours.

*Clearance Officer:* Ellen Neubauer, (202) 927–9627, 1500 Pennsylvania Avenue, Room 2064D, Washington, DC 20220.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. E9–21844 Filed 9–10–09; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Friday,
September 11, 2009

# Part II

# Department of the Interior

## Fish and Wildlife Service

## 50 CFR Parts 13 and 22

## Eagle Permits; Take Necessary To Protect Interests in Particular Localities; Final Rules

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Parts 13 and 22**

**[FWS-R9-MB-2008-0057; 91200-1231-9BPP-L2]**

**RIN 1018-AV81**

## Eagle Permits; Take Necessary To Protect Interests in Particular Localities

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** In conjunction with release of a final environmental assessment of this action, the U.S. Fish and Wildlife Service (''we'' or ''the Service'') is finalizing permit regulations to authorize limited take of bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*) under the Bald and Golden Eagle Protection Act (Eagle Act), where the take to be authorized is associated with otherwise lawful activities. These regulations also establish permit provisions for intentional take of eagle nests under particular, limited circumstances.

**DATES:** This rule goes into effect on November 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** Eliza Savage, Division of Migratory Bird Management, via e-mail at *eliza_savage@fws.gov;* telephone: 703-358-2329; or U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mailstop 4107, Arlington, Virginia 22203-1610.

**SUPPLEMENTARY INFORMATION:**

### Background

These final regulations authorize the limited take of bald eagles and golden eagles under the Bald and Golden Eagle Protection Act (Eagle Act) (16 U.S.C. 668–668d), where the take to be authorized is associated with otherwise lawful activities. These regulations also establish permit provisions for intentional take of eagle nests where necessary to ensure public health and safety and in other limited circumstances. We proposed these regulations on June 5, 2007 (72 FR 31141) and provided a 90–day public comment period, which closed on September 4, 2007. The Service received approximately 21,500 comments, about 21,400 of which are essentially identical. Thirty-five respondents provided substantive input that was helpful in crafting final regulations. The 35 respondents consisted of: one Federal agency, three tribes, six State conservation agencies, four flyway committees (associations of State conservation agencies), one State department of transportation, five environmental non-governmental organizations (NGOs), four industry associations, three law firms/consultants on behalf of Florida development companies, two power companies, one Federal reclamation project, one airport, three rail transportation companies (commenting together), and three private citizens.

We released a draft environmental assessment (DEA) of the action on August 14, 2008 (73 FR 47574) and re-opened the public comment period on the proposed rule with some revisions noted in the August 14 **Federal Register** notice. During that 30–day comment period, we received 58 comments from: one airport, three electric utilities, three Federal agencies, ten individuals (non-tribal), five industry associations, nine NGOs, one conglomeration of railroad companies, 13 State agencies, three flyway committees, one transportation association, three Native American tribal members one tribal Department of Natural Resources, three tribes, and two confederations of tribes.

Based on public comment received on the June 5, 2007 proposed rule, new information compiled through the process of drafting the DEA, and public comment on the DEA and re-opened rule, we developed this final rule, the final environmental impact assessment (FEA), and a Finding of No Significant Impact. Along with a variety of small changes, this final rule contains the following significant additions and revisions from the June 5, 2007, proposed rule:

- The rule was split into two rules to be finalized separately from one another. The original proposal to extend (or ''grandfather'') Eagle Act take authorization to take previously authorized under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) has been separated from the remainder of the provisions in order to finalize the ''grandfathering'' provisions more expeditiously. Those provisions were published as a final rule on May 20, 2008 (73 FR 29075).
- We modified our interpretation (provided in the June 5, 2007, proposed rule) of the statutory mandate that permitted take be ''compatible with the preservation of the bald eagle or the golden eagle.'' In the original proposal, we proposed to use the standard that regional and national eagle populations not decline at a rate greater than 0.54% annually. In this final rule, we interpret the ''preservation'' standard to allow actions that are consistent with the goal of stable or increasing breeding populations.
- The rule includes new issuance criteria to ensure that, except for safety emergencies, Native American religious needs are given first priority if requests for eagle take permits exceed take thresholds that are compatible with the preservation of the bald eagle or the golden eagle.
- The rule no longer provides different issuance criteria for lethal versus non-lethal take. Rather, it contains separate provisions for programmatic take versus individual instances of take.
- We amend the existing Eagle Depredation Permit regulations at 50 CFR 22.23 to extend permit tenure from 90 days to up to 5 years for purposes of hazing eagles. The purpose of these revisions is to enable issuance of permits that combine programmatic authorizations provided under § 22.23 and the regulations in this final rule. We are also taking the opportunity to revise terminology throughout § 22.23 to clarify that we can issue permits under that section to prevent or resolve safety emergencies as well as to protect agriculture and wildlife.
- The rule expands (from the June 2007 proposed rule) the purposes for which eagle nests may be taken to include take necessary to ensure public health and safety. The proposed rule limited nest removal to emergencies where human or eagle safety was imminently threatened.
- Nest take permits may be issued for projects that will provide a net benefit to eagles (including projects where the net benefit is the result of compensatory mitigation measures).
- Permits may also be issued to take eagle nests built on human-engineered structures where the nest interferes with the intended use of the structure.
- The rule redefines some terms and includes new definitions for a number of additional terms used in the regulations.

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) (Eagle Act) prohibits the take of bald eagles and golden eagles unless pursuant to regulations (and in the case of bald eagles, take can only be authorized under a permit). While the bald eagle was listed under the ESA, authorizations for incidental take of bald eagles were granted through the ESA's section 10 incidental take permits and ESA's section 7 incidental take statements, both of which were issued with assurances that the Service would exercise enforcement discretion in relation to violations of the Eagle Act and Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712). Upon delisting, all

prohibitions contained in the ESA, such as those that prescribe the take of bald eagles, no longer apply. However, the potential for human activities to violate Federal law by taking eagles remains under the prohibitions of the Eagle Act and the MBTA. The Eagle Act defines the ''take'' of an eagle to include a broad range of actions: ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb.'' ''Disturb'' is defined in regulations at 50 CFR 22.3 as: ''to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.''

Many actions that are considered likely to incidentally take (harm or harass) eagles under the ESA will also disturb or otherwise take eagles under the Eagle Act. Until now, there was no regulatory mechanism in place under the Eagle Act to permit take of bald or golden eagles comparable to incidental take permits under the ESA. This rule adds a new section at 50 CFR 22.26 to authorize the issuance of permits to take bald eagles and golden eagles on a limited basis. The regulations are applicable to golden eagles as well as bald eagles. We will authorize take of bald or golden eagles only if we determine that the take (1) is compatible with the preservation of the bald eagle and the golden eagle and (2) cannot practicably be avoided. For purposes of these regulations, ''compatible with the preservation of the bald eagle or the golden eagle'' means ''consistent with the goal of stable or increasing breeding populations.'' Although the biologically-based take thresholds for permitting under these regulations will be based on regional populations (as explained below and in more detail in the FEA), we will also consider other factors, such as cultural significance, that may warrant protection of smaller and/or isolated populations within a region.

We are adding a second new section at 50 CFR 22.27 to authorize the removal of bald eagle and golden eagle nests where (1) necessary to alleviate a safety hazard to people or eagles, (2) necessary to ensure public health and safety, (3) the nest prevents the use of a human-engineered structure, or (4) the activity, or mitigation for the activity, will provide a net benefit to eagles. We are also promulgating new definitions under the Eagle Act to clarify terms used in the permit regulations. Permit issuance under § 22.26 and § 22.27 will be governed by the permit provisions presently in 50 CFR parts 13 and 22, and new provisions we are finalizing as § 22.26 and § 22.27.

In our June 5, 2007, proposed rule, we also proposed certain provisions to extend Eagle Act authorizations to persons previously granted authorization to take eagles under the ESA. We split the rulemaking into two separate rules and finalized the ESA-related provisions separately on May 20, 2008 (73 FR 29075).

Most rules take effect 30 days after **Federal Register** publication; however, more time is needed to work out important details about how this program will be implemented. Therefore this rule has an effective date of 60 days after publication in the **Federal Register**. We are drafting implementation guidance, and will release it for public notice and comment before officially adopting it. Although the implementation guidance will not be finalized by the rule's effective date, the extra 30 days will help promote consistency in the initial permit administration, and we can begin issuing permits using the draft guidance.

*History*

On August 8, 2007, the bald eagle was removed from the List of Threatened and Endangered Wildlife (72 FR 37345, July 9, 2007). The final delisting rule also constituted our final decision that the Sonoran Desert population of bald eagles did not qualify as a distinct population segment (DPS), and was therefore not a listable entity under the ESA. Our finding on the status of the Sonoran Desert population was challenged in court. A March 5, 2008, ruling by the U.S. District Court for the District of Arizona (*Center for Biological Diversity* v. *Kempthorne,* CV 07-0038-PHX-MHM (D. Ariz)) ruled in favor of the plaintiffs. As a result of the court order, we published two documents in the **Federal Register**. First, on May 1, 2008, we published a final rule reinstating ESA threatened status for bald eagles in the Sonoran Desert area of central Arizona (73 FR 23966). The final rule also included a map showing the geographic area where bald eagles are protected as a threatened species. Second, on May 20, 2008, we published a notice initiating a status review for bald eagles in the Sonoran Desert area of central Arizona (73 FR 29096). Once the status review is completed, we will issue a 12–month finding on whether listing these bald eagles as a DPS under the ESA is warranted, and if so, whether that DPS should be listed as threatened or endangered.

We estimate the current number of breeding pairs in the 48 contiguous States to be over 9,700. Bald eagles were never listed as threatened or endangered in Alaska, where we currently estimate bald eagles to number between 50,000 and 70,000 birds, including approximately 15,000 breeding pairs. Bald eagles do not occur in Hawaii.

Under sections 7(b)(4) and 10(a)(1)(B) of the ESA, we may authorize the incidental take of listed wildlife that occurs in the course of otherwise lawful activities. Thus, while the bald eagle was listed under the ESA in the lower 48 States (and where it is still listed, i.e., the Sonoran Desert area of central Arizona), two mechanisms were available to authorize take that was associated with, but not the purpose of, a human activity. Eagle take that was prohibited under the ESA is, in many instances, also prohibited under the Eagle Act. Now that the bald eagle is delisted (except for the Sonoran Desert population), a mechanism is needed to authorize take of bald eagles pursuant to the Eagle Act. The mechanism should also be available to authorize take of golden eagles, which were never listed as threatened or endangered under the ESA, as long as it is crafted with sufficient safeguards to ensure the preservation of both species.

The Eagle Act provides that the Secretary of the Interior may authorize certain otherwise prohibited activities through promulgation of regulations. The Secretary is authorized to prescribe regulations permitting the ''taking, possession, and transportation of [bald or golden eagles] . . . for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or . . . for the protection of wildlife or of agricultural or other interests in any particular locality,'' provided such permits are ''compatible with the preservation of the bald eagle or the golden eagle'' (16 U.S.C. 668a). In accordance with this authority, the Secretary has previously promulgated Eagle Act permit regulations for scientific and exhibition purposes (50 CFR 22.21), for Indian religious purposes (50 CFR 22.22), to take depredating eagles (50 CFR 22.23), to possess golden eagles for falconry (50 CFR 22.24), and for the take of golden eagle nests that interfere with resource development or recovery operations (50 CFR 22.25). This rulemaking establishes permit regulations to authorize eagle take ''for the protection of . . . other interests in any particular locality.'' This statutory language accommodates a

broad spectrum of public and private interests (such as utility infrastructure development and maintenance, road construction, operation of airports, commercial or residential construction, resource recovery, recreational use, etc.) that might ''take'' eagles as defined under the Eagle Act.

In accordance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have prepared a final environmental assessment (FEA) of this action. You can obtain a copy of the FEA from *http://www.fws.gov/migratorybirds/baldeagle.htm*.

**Description of the Rulemaking**

*Take Permit Regulations Under 50 CFR 22.26.*

We promulgate a new permit regulation under the authority of the Eagle Act for the limited take of bald eagles and golden eagles ''for the protection of . . . other interests in any particular locality'' where the take is compatible with the preservation of the bald eagle and the golden eagle, is associated with and not the purpose of an otherwise lawful activity, and cannot practicably be avoided. ''Practicable'' in this context means ''capable of being done after taking into consideration, relative to the magnitude of the impacts to eagles (1) the cost of remedy compared to proponent resources; (2) existing technology; and (3) logistics in light of overall project purposes.''

We anticipate that permits issued under this regulation will usually authorize take that occurs in the form of disturbance; however, in some limited cases, a permit may authorize lethal take that results from but is not the purpose of an otherwise lawful activity. Programmatic take (take that is recurring and not in a specific, identifiable timeframe and/or location) will be authorized only where it is unavoidable despite implementation of comprehensive measures developed in cooperation with the Service to reduce the take below current levels (see discussion below, under ''Programmatic permits''). This type of authorization can be extended to industries, such as electric utilities or transportation industries, that currently take eagles in the course of otherwise lawful activities but who can work with the Service to develop and implement additional, exceptionally comprehensive measures to reduce take to the level where it is essentially unavoidable. A programmatic take permit could also be issued to State and Federal agencies that take eagles in the course of their activities (e.g., construction and maintenance of roads and other critical infrastructure) if they adopt such advanced conservation measures.

Purposeful take will not be authorized under this permit. In rare cases where purposeful take may be necessary to avoid incidental take (such as relocating birds or a nest from a critical project area), it may be authorized under 50 CFR 22.23 (for purposeful take of eagles to protect agriculture, wildlife, and other interests), 50 CFR 22.25 (take of golden eagle nests for resource development and recovery operations), or new 50 CFR 22.27 (take of nests for health and safety). The latter regulation is finalized as part of this rulemaking. Where appropriate, the Service will issue a single permit that combines authorizations provided under the various regulations. For example, an airport that meets the obligations of its Wildlife Hazard Management Plan and adopts measures developed in cooperation with the Service to minimize the potential for take of eagles, could be issued a programmatic permit under these regulations (§ 22.26) that would be valid for up to 5 years to authorize eagle take that occurs as the result of unavoidable collisions between eagles and planes. One of the stipulations of the permit would likely be the requirement to haze eagles in the vicinity of airports, which in some cases could constitute disturbance (for example, to prevent eagles from re-nesting at a hazardous location). Because this hazing is intentional and the effects on the eagles purposeful, it does not meet the issuance criteria for the § 22.26 permit, which requires the taking to be associated with, but not the purpose of, the activity. Therefore, we would issue the permit with the combined authority of both § 22.26 and § 22.23. However, the regulations at § 22.23 had previously limited permit tenure to 90 days because the need for programmatic authorization was not contemplated at the time that regulation was developed. In order to have the ability to extend this type of authorization to ''Advanced Conservation'' programmatic permittees, we are amending the regulations at § 22.23 to allow permits to also be valid for up to five years. We are also taking the opportunity to make additional minor revisions throughout § 22.23 to clarify that we may issue permits under that section to alleviate safety emergencies, and not just to protect agriculture, wildlife or other interests from depredating eagles. Hazing eagles at airports has been the primary purpose for which we have exercised this option, but there may be other scenarios where eagles are not depredating on any resource or private property, but their presence poses a danger to themselves or to people (e.g. at uncovered landfills where eagles may ingest toxic substances). Other than these clarifying revisions, including to the section title, and amending the permit tenure, we are not making any substantive revisions to the regulations at § 22.23 in this rulemaking.

*Population Assessment and Take Thresholds.* Permit issuance will be conditioned on various criteria, the most important of which is that the permitted take is compatible with the preservation of the bald eagle and the golden eagle. The statutory requirement that the authorized activities be compatible with the preservation of bald eagles and golden eagles ensures the continued protection of the species while allowing some impacts to individual eagles. For purposes of these regulations, ''compatible with the preservation of the bald eagle and golden eagle'' means ''consistent with the goal of stable or increasing breeding populations.''

In our June 5, 2007, proposed rule, we proposed to use 0.54% as the threshold rate of decline, which is the rate of decline used by Partners in Flight (PIF) as one of the factors for designating an avian species to their Continental Watch List. However, steady declines, even as small as 0.54% annually, would cumulatively result in an unacceptably large decrease in eagle populations over time. For this and other reasons (see Responses to Public Comments), we agree that the original proposed management scenario was not sufficiently conservative and will instead adopt as our management goal increasing or stable breeding populations.

In the DEA and notice re-opening of the comment period on the rule (73 FR 47574, August 14, 2008), to elucidate the statutory standard of ''preservation of the bald eagle or the golden eagle,'' we proposed the following terminology: ''maintaining increasing or stable populations.'' We continue to support the essential meaning of that standard, but recognized that it could be misapplied to constrain any authorization of take because any take of a bald or golden eagle by some degree results in a population decrease, even if short-term and inconsequential for the long-term preservation of the species. Thus, if interpreted so narrowly, the word ''maintaining'' would render us unable to authorize any take. Therefore, we are revising our interpretation of ''preservation of the eagle'' to read ''consistent with the goal of stable or increasing breeding populations.'' The

phrase ''consistent with the goal of'' will allow take that is compatible with long-term stability or growth of eagle populations. Adding the word ''breeding'' clarifies the significance of the number of breeding pairs for maintaining or growing populations, versus floaters (non-breeding adults). For more discussion on the biological basis for distinguishing between breeding eagles and floaters, see the FEA.

To establish management populations for bald eagles, we used natal populations (eagles within the median natal dispersal range of each other, estimated at 43 miles) in our evaluation in order to look at distribution across the landscape. Being able to see where natal populations appear sparser, rather than concentrated, allows us to determine natural boundaries between regional eagle populations, reducing the risk that we would issue take permits in any one regional management area in a manner that is disproportionate to the population in the area.

We acknowledge that this approach is somewhat subjective, and that the regional management populations delineated are not, in most cases, genetically or even demographically isolated. However, we believe the approach does serve to identify biologically-based, regional populations at a scale meaningful for eagle conservation. The Service's goal in managing bald eagles at this scale is to ensure permitted take does not negatively affect the species' status in any regional management population.

Because the management populations delineated by this approach roughly correspond to the Service's organizational structure made up of eight Service Regional Offices, we will manage bald eagles based on populations within the eight Service Regions, with some shared populations. Permits will be administered by Service Regions in coordination with each other, especially where a management area lies in more than one Service Region. We plan to evaluate this management and administrative approach regularly, at least once every five years.

For golden eagles, available data on distribution are not as spatially precise as data for bald eagles. We will manage take of golden eagles according to thresholds set at the Bird Conservation Region (BCR) level because the only range-wide estimates available for golden eagles are BCR-scale population estimates. BCRs are ecologically distinct regions in North America with similar bird communities, habitats, and resource management issues. Developed by a mapping team at the first international meeting of the North American Bird Conservation Initiative (NABCI) in 1998, BCRs are an application of the framework of nested ecological units delineated by the Commission for Environmental Cooperation (CEC).

Because Service Regions are not administered according to BCR boundaries, we will administer permits by Service Regional Permit offices. Service Regions would coordinate closely when issuing permits to ensure that the threshold for that BCR is not exceeded. Unfortunately, there is little reliable recent data for breeding golden eagles. Many States have not had the resources to conduct monitoring of golden eagle populations, in some cases for up to 20 or more years. However, we will base thresholds on existing data and modeling until better data become available. As discussed further below and in greater detail in the FEA, the best available data we have for golden eagles indicate modest declines in the four BCRs that constitute 80 percent of its range in the lower 48 states. As a result, until we have additional data to show that populations can withstand additional take, we are deferring implementation of the new permit types for golden eagles, except for safety emergencies and programmatic permits. We will continue to issue historically-authorized take permits under existing permit types at the level of take carried out under those permits (average over 2002-2007).

We will use modeling to evaluate the level of take we can permit that is compatible with this statutory threshold, taking into consideration the cumulative effects of all permitted take, including other forms of lethal take permitted under this section and other causes of mortality and nest loss. Due to the inherent limits of monitoring to detect precise fluctuations in bald eagle and golden eagle numbers, coupled with the uncertainty as to whether individual actions being permitted will in fact result in a ''take,'' we cannot precisely correlate each individual permit decision with a specific population impact. However, we will periodically re-calibrate regional take thresholds, using the best available data, including reporting data from permittees, data from post-delisting monitoring (for bald eagles), WEST surveys (for golden eagles), the Breeding Bird Survey, and fall and winter migration counts to assess the status of eagle populations and adjust permitting thresholds on an ongoing basis as appropriate.

In our June 5, 2007, proposed rule, we stated that our preliminary analysis indicated that demand for permits under these regulations, and the effects of issuing those permits, including mitigation measures, would not be significant enough to cause a decline in eagle populations from current levels. (We recognized that take of bald eagles in the Southwest would need to be extremely limited, if permitted at all.) However, further analysis indicates that there are additional populations where a relatively modest level of demand for take permits could exceed the level of take that would be compatible with maintaining current population levels, particularly for golden eagles.

A 2006 survey (Good and others, 2007) showed decreasing golden eagle populations in two BCRs. A draft report of 2007 surveys in the same areas (BCRs 9, 10, 16, and 17, hereinafter WEST areas) found decreasing golden eagle populations in two BCRs, one of which was the same as the previous report (Good and others, 2008). Kirk and Hyslop (1998) indicated that golden eagle populations may be declining in some areas of Canada. Good and others (2004) estimated that there were just over 27,000 golden eagles in the 4 BCRs in which the species is of conservation concern. These BCRs encompass much of the western U.S. population and most of the North American population of this species. Breeding bird surveys and migration counts are inconclusive but suggest lowered reproduction rates in the western United States, possibly due to habitat alteration and loss, with concomitant declines in prey (Kochert and others, 2002). A preliminary report on the 2008 surveys in the WEST areas showed population declines in all four BCRs covered in the survey, an area which is believed to contain approximately 80% of the golden eagle population in the lower 48 states.

These new permits represent a somewhat different approach to eagle management and have significant policy implications and uncertainties. Those uncertainties and stochasticity (natural variability in vital rates affecting population trends) for both species support a more conservative approach than we proposed in our DEA, which proposed capping threshold at ½ maximum sustainable yield (MSY). The MSY is the greatest harvest rate over an indefinite period that does not produce a decline in the number of breeding adults in the population.

For a number of reasons (outlined in the following discussion) we intend to initially cap permitted take of bald eagles at 5% estimated annual productivity. This approach is consistent with the recommendations made by Millsap and Allen (2006) for

permitting take of various raptor species for falconry purposes. For golden eagles west of 100 degrees West longitude, including in Alaska, we will initially implement this rule only insofar as issuing take permits based on levels of historically authorized take, safety emergencies, and take permits designed to reduce ongoing mortalities and/or disturbance. Future projects seeking programmatic permits would need to minimize their own take of golden eagles to the point that it is unavoidable and also reduce take from another source to completely offset any new take from the new activity. Estimates of golden eagle population size in Alaska are coarse, based upon even fewer data sources than in the lower 48 states, and juvenile survival may be significantly lower, so management would therefore need to be conservative. In addition, McIntyre *et al.* (2008) suggested that conservation strategies for migratory golden eagles require a continental approach.

For golden eagles east of 100 degrees West longitude, we will not issue any take permits unless necessary to alleviate an immediate safety emergency. We do not have enough data on rates of golden eagle mortality in the eastern U.S. to issue programmatic take permits.

Our modeling showed there would be negative effects to the floater portion of the bald eagle population (using population trend data from Florida) at ½ MSY and even some minor effects with setting take at 5% of estimated annual productivity. Floaters, for which monitoring is rarely conducted, serve to buffer populations from decline in times when productivity does not offset mortality, and also serve to provide a buffer for unforeseen effects to populations. Importantly, the models did not factor in the cumulative impacts that were discussed in the DEA. Furthermore, the lack of annual monitoring to ensure we are not having a negative effect on populations, particularly when the thresholds we are establishing would be in effect for five years, compels us to adopt the more conservative approach. Some commenters, including eagle experts in various parts of the U.S. believe the DEA's population numbers and survival rates for bald eagles may have been too high for some areas of the country.

Additionally, the caps recommended in Millsap and Allen were in the context of falconry, where removal of birds from the population has no associated impacts to habitat, whereas many permits issued under both these new regulations will have long-term or permanent habitat-related impacts in addition to the removal of an individual from the population. Therefore, we believe that caps should be no less conservative than recommended for falconry take.

The lower take thresholds also reflect the cultural significance of both species. Cultural significance is not limited to Native American religious purposes, but encompasses a broad cultural regard for both species. Although collected by some Native American tribes for ceremonial purposes, the overall cultural value placed on bald eagles and golden eagles is generally quite distinct from the value of harvesting them. This fact warrants a different, significantly more conservative approach than for managing game bird populations wherein allowable take approaches MSY.

We intend, through a structured coordination process with States and tribes, to develop monitoring and research adequate to both resolve current uncertainties in the data and to provide enhanced ability to detect the effects of the permit program. If, after implementation for a time period commensurate with the normal population cycles of the eagle, data then indicate take thresholds can be increased in certain regions, we will increase thresholds accordingly to allow more take. One factor that should allow us to increase take thresholds in some regions for both species is the implementation of advanced conservation measures through programmatic permits to reduce ongoing take that is currently unauthorized. (See our discussion below under ''Programmatic Permits.'') For more detailed discussion of population modeling and permitting thresholds, please see our final environmental assessment of this action, available on our website at *http://www.fws.gov/migratorybirds/baldeagle.htm*.

To address the possibility that demand exceeds our scientifically-based take thresholds, the final regulation contains permit issuance criteria to ensure that requests by Native Americans to take eagles from the wild—where the take of live, wild eagles is absolutely necessary to meet the religious purposes of the tribe, as opposed to the use of feathers and parts that may be obtained from the National Eagle Repository—are given first priority over all other take, except as necessary to alleviate safety emergencies. (Permit regulations governing take and possession of eagles by Native Americans are set forth in 50 CFR 22.22) The American Indian Religious Freedom Act (42 U.S.C. 1996), sets forth Federal policy to protect and preserve the inherent right of American Indians to express and exercise their traditional religions, including but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

If emergency and Native American religious needs can be met, the issuance criteria further provide that programmatic permit renewals are given third priority. Projects to promote and maintain public health and safety have fourth priority. For golden eagle nest take permits, resource development and recovery operations have fifth priority. Assuming those interests can be met, bald eagle take for other interests may be permitted as long as total take authorizations do not surpass 5% estimated annual productivity for the regional bald eagle population. Initially, until we have data to show that golden eagles can withstand additional take, we will issue permits at historically-authorized take levels under existing permits, for emergency take, and for programmatic take (west of 100 degrees West longitude). If, in the future, data and modeling suggest golden eagle populations can support additional take, we would, in accordance with the prioritization criteria, begin to authorize golden eagle take at up to 1% of annual productivity, unless information available at that time demonstrates that higher levels of take can be supported (following Millsap and Allen 2006).

The Service's Regional Directors each will be responsible for developing a structured allocation process consistent with the rule's prioritization criteria to be implemented in each Service Region if there is evidence that demand for take will exceed take thresholds for either species of eagle.

Because we need, at least initially, to limit take permits for golden eagles to historically-authorized take levels, we will use the prioritization issuance criteria from this rule to guide permit decisions with regard to allocating all golden eagle take permits. For example, in Service Region 2, the Service has issued permits to take 28 golden eagles per year on average from 2002 – 2007 under the various permit types that allow take (e.g., scientific collecting, depredation, Native American religious purposes, etc.). On average, 23 of the golden eagles were taken for Native American religious purposes. If next year, the demand from qualified Native Americans increases to 28, we will issue *all* the available take permits (28) to Native Americans—unless there is a need to take eagles to alleviate a safety emergency (to protect either eagles or

people from physical harm or death), in accordance with the prioritization order.

A wide variety of activities, including various types of development, resource extraction, and recreational activities near sensitive areas such as nesting, feeding, and roosting sites, can disrupt or interfere with the behavioral patterns of bald eagles. We developed National Bald Eagle Management Guidelines (NBEMG or Guidelines) as a tool for landowners, project proponents, and the general public engaged in activities in the vicinity of bald eagles. The NBEMG are available at *http://www.fws.gov/migratorybirds.baldeagle.htm*. The NBEMG address potential negative effects of human activities on bald eagles, based on observed bald eagle behavior, and provide guidance on what types of activities are likely to cause bald eagle disturbance at varying distances to nests, communal roosts, and foraging areas, and how to avoid such disturbance.

We intend to use the *Draft U.S. Fish and Wildlife Service Raptor Conservation Measures* (soon to be released for public notice and comment) as interim guidance for golden eagle disturbance, until species-specific guidance can be developed. When referring to both the NBEMG and the *U.S. Fish and Wildlife Raptor Conservation Measures* in this rulemaking document, we refer to both documents together as ''guidelines'' with a lower case ''g.''

By adhering to the guidelines, landowners and project proponents should be able to avoid eagle disturbance most of the time. If avoiding disturbance is not practicable, the project proponent may apply for a take permit. A permit is not required to conduct any particular activity, but is necessary to avoid potential liability for take caused by the activity.

Disturbance may also result from human activity that occurs *after* the initial activities (e.g., residential occupancy or the use of commercial buildings, roads, piers, and boat-launching ramps). In general, we do not intend to issue permits for routine activities such as hiking, driving, normal residential activities, and ongoing use of existing facilities, where take could occur but is unlikely. New uses or uses of significantly greater scope or intensity may raise the likelihood that eagles will be disturbed, and as such could require authorization for take under these regulations.

To assess whether the Service's predictions regarding the likelihood of disturbance are generally sound, and thereby ensure that permit requirements are not unnecessarily burdensome to the public and are adequately protecting eagles, we will require permittees to provide basic post-activity monitoring (described below) by determining whether the nest site, communal roost, or important foraging area continues to be used by eagles for up to three years following completion of the activity for which the permit was issued, depending on the form and magnitude of the anticipated take and the objectives of the associated conservation measures. Where an activity is covered by a management plan that establishes monitoring protocols (e.g., an airport Wildlife Hazard Management Plan), the permit may specify that monitoring shall be conducted according to the pre-existing management plan.

We will use reporting data, as well as supplemental data we collect from some permittees' project areas, to ascertain how the activity actually affected the eagles in the area. With this information, we may be able to adjust take thresholds if take does not occur. The report data also will help us to assess how likely it is that future activities will result in loss of one or more eagles, a decrease in productivity of bald or golden eagles, and/or the permanent abandonment or loss of a nest site, communal roost site, or important foraging area. The outcome of disturbance permits, recorded in this way, may allow us to recalibrate the number of annual permits available in a Service Region, and to refine recommendations in future versions of the guidelines regarding buffer distances, timing of activities, and other practices that minimize take of eagles.

Although the information we will ask permittees to provide is relatively basic—whether eagles are observed at the nest, roost site or foraging area—we realize that reporting will not always be accurate. In addition to errors, some permittees may (unjustifiably) be concerned about law enforcement and may under-report take without fully understanding that the take has been authorized by their permits and thus is not a violation of the law. Overall, however, we expect most permittees will make a good-faith effort to honestly report eagle use of the area, resulting in a substantial body of useful information we do not otherwise have the resources to collect.

Along with annual report data, we will periodically assess overall population trends of both species of eagles, taking into consideration the cumulative effects of other activities that take eagles and eagle mortalities due to other factors. Based on the modeling we will use to set take thresholds, we do not expect population declines as the result of the authorizations granted through these regulations. However, it is also possible that external factors could arise that negatively affect eagle populations. Whatever the cause, in order to ensure that take is compatible with the preservation of the bald or golden eagle, we will not issue permits for take within a regional eagle population without sufficient data indicating the take will not result in a population decline.

*Programmatic permits*. The June 2007 proposed rule distinguished between lethal and non-lethal take (e.g., disturbance), and proposed that lethal take would be authorized only if it was unavoidable even when Best Management Practices (BMPs) were followed. We revised this concept to remove the distinction between lethal and non-lethal take, and replace it with a distinction between individual or ''one-time'' [1] take versus programmatic take. A programmatic permit will be available to industries or agencies undertaking activities that may disturb or otherwise take eagles on an on-going operational basis. We are defining ''programmatic take'' as ''take that (1) is recurring, but not caused solely by indirect effects, and (2) occurs over the long term and/or in a location or locations that cannot be specifically identified.'' The second criterion is the one that distinguishes programmatic take from any other take that has indirect effects that continue to cause take after the initial action. It is the key factor that makes programmatic take programmatic.

We define ''programmatic permit'' as ''a permit that authorizes programmatic take. A programmatic permit can cover other take in addition to programmatic take.'' We can issue programmatic permits for disturbance as well as take resulting in mortalities, based on implementation of ''advanced conservation practices'' developed in coordination with the Service. ''Advanced conservation practices'' (ACPs) refers to scientifically-supportable measures that are approved by the Service and represent the best-available techniques to reduce eagle disturbance and/or ongoing mortalities to a level where remaining take is unavoidable. The Federal Highway Administration is an example of an agency for which this streamlined

[1] By describing the standard (non-programmatic) permit as authorizing ''individual'' or ''one-time'' take, we do not mean to infer that only one eagle can be taken under a standard permit, or that if more than one eagle is taken, the take must occur simultaneously. We use the term, ''one-time'' for lack of a better word to refer to take is quantifiable and of a specified amount.

approach may benefit the agency and eagles. A programmatic take permit may be appropriate for industries such as the energy and transportation providers, among others, if they elect to work with the Service to develop ACPs. The ACPs and plan specifications will then become permit conditions, along with monitoring and reporting requirements more comprehensive than those for individual take permits. Programmatic permits are designed to provide a net benefit to eagles by reducing ongoing unauthorized take. Accordingly, programmatic permit conditions will be designed to provide ongoing long-term benefits to eagles. Recipients of programmatic permits must perform more rigorous monitoring than is required for standard, individual take permits.

Because the requirements for obtaining programmatic take authorization are designed to reduce take, the take authorized by programmatic permits for ongoing activities will not be subtracted from regional thresholds, nor would they be subject to the prioritization criteria. The reductions in take that result from implementation of new measures to reduce take from ongoing activities under programmatic permits may allow the Service to increase take thresholds and make additional permits available for other activities likely to result in take.

Applicants for programmatic permits for *new* activities will be subject to the same rigorous standards and may also be required to apply conservation measures at other sites (possibly owned or operated by a third party) where eagles are taken by existing operations. The purpose of the off-site measures would be to reduce take to a level that offsets some or all of the new take from the applicant's activity. The degree to which the applicant would be required to offset the take will depend on the status of eagle populations in the region; if populations of the particular eagle species are robust, the Service may not require any off-site reductions in take. However, if regional populations cannot absorb significant new take, the Service may require the project proponent to completely offset the effects of the new activity with reductions in take elsewhere.

To encourage potential applicants to seek programmatic permits (versus standard permits), the regulations contain issuance criteria that give priority to those seeking renewal of programmatic permits. These criteria will provide programmatic permittees with some assurance (though never an absolute guarantee) that previously authorized levels of take from on-going operations will continue to be authorized in the future. Programmatic permit renewals will have third priority, after (1) safety emergencies, and (2) take necessary to meet Native American religious needs, but before (4) non-emergency public health and safety.

A programmatic permit is optional. Entities that engage in programmatic take and who wish to obtain authorization for the take can choose whether to apply for the programmatic take permit or apply for standard permits for individual takes. One advantage of opting for the programmatic permit is it would remove liability comprehensively. It also lessens concern about whether additional take can be authorized under take thresholds in the future. The disadvantage is that the process of working with the Service to develop the permit conditions is likely to be time-consuming and more expensive than seeking a standard permit. Also, implementation of the ACPs will in most cases require substantial resources. In the long term, however, depending on the scale of an applicant's operations, programmatic permits should be the most economical approach for authorizing long-term or wide-ranging take of eagles.

A programmatic permit is not available where the only long-term take is due to indirect effects from an initial action. Programmatic take is the direct result of ongoing operations. The following are e*xamples of programmatic take:*

1. A railroad that routinely strikes eagles feeding on carcasses on the tracks.
2. Utilities that kill eagles through collisions and electrocutions from contact with power lines.
3. Ongoing disturbance at a port due to vessel traffic and/or other port operations.
4. Construction and maintenance of highways throughout a State or other jurisdiction that routinely disturbs eagles.
5. Airports that periodically (but immediately upon discovery) need to remove eagle nests to protect human and eagle safety.

*Below are examples of what is not programmatic take:*

1. Construction of a boat ramp, with or without long-term indirect effects that take eagles (boat traffic).
2. Construction of a port when eagles are disturbed by pile driving and other construction activities.
3. Construction of a single highway, or multiple highways, where eagle take can be projected to occur at particular locations and during specific project phases.

Although we define ''programmatic take'' as take that results from an activity and not from the activity's indirect effects, many activities that result in programmatic take will also have adverse indirect effects on eagles. Therefore, most programmatic permits will authorize other take in addition to the programmatic take, to cover the indirect effects. The Service will consider indirect effects of activities under both types of permits, first when deciding whether to issue the permit, and again when establishing conservation measures. Because programmatic permits are designed to reduce take to the level where it is unavoidable, if there are ACPs that will reduce take caused by indirect effects, those ACPS will be required conditions of the programmatic permit.

As further illustration of the differences between programmatic and standard permits, and the need to consider indirect effects under both, the following are two distinct activities that each directly take eagles and also have indirect effects that continue to take eagles; however, only one programmatically takes eagles and can be covered with a programmatic take permit.

First, a large housing development provides buffers around each nest on the property as recommended by the Service to avoid disturbing eagles. However, due to various constraints, the developer is unable to avoid impacts to the eagles' prey base, resulting in take of eagles in the form of lost productivity or abandonment of nesting territories. In this case, the construction of the development is not ongoing. What continues are the indirect effects of depriving eagles of their prey base. Therefore, the take caused by the housing development is not programmatic take, and to be authorized, would have to be covered under a standard permit.

Our second example is a company interested in siting a wind-power facility. We are currently unaware of any measures that would eliminate eagle mortalities when turbines are sited in golden eagle habitat (including migration corridors). If ACPs can be developed to significantly reduce the take, the operator may qualify for a programmatic take permit, since the ongoing mortalities are the direct result of the operation of the turbines. In addition to measures designed to reduce take directly, ACPs should also include measures to reduce indirect effects that contribute to the level of take, such as ensuring the project site does not

provide enhanced habitat for small mammals that eagles feed on, which would attract eagles to the area and increase the likelihood of collision with turbines.

*Permit application process.* Permits are available to Federal, State, municipal, or tribal governments; corporations and businesses; associations; and private individuals, all of which are subject to the prohibitions of the Eagle Act. Persons and organizations that obtain licenses, permits, grants, or other such services from government agencies are responsible for their own compliance with the Eagle Act and should individually seek permits for their actions that may take eagles. Government agencies must obtain permits for take that would result from agency actions that are implemented by the agency itself (including staff and contractors responsible for carrying out those actions on behalf of the agency).

The final regulations do not specify what information an applicant must submit to apply for an eagle take permit or to file an annual report, other than that he or she must submit a complete application form, including any required attachments to apply for a permit, and for annual reporting, the permittee must submit all the information required on the report form. By avoiding codification of application and reporting requirements, we can revise application and reporting requirements without undergoing the time-consuming rulemaking process. However, the public will have the opportunity to provide input on the content of these forms. All forms must be approved by the President's Office of Management and Budget (OMB) every three years, and as part of that process, all new forms and all changes to forms are subject to public review via a series of notices in the **Federal Register**. The forms we will use when this rule takes effect were subject to the OMB and public review process while this rule was being developed.

The new Service permit application Form 3-200-71 requires the following information from the applicant as part of the application process (in addition to the requirements of § 13.12(a) of this subchapter, which apply to all types of permits issued by the Service):

1. A detailed description of the activity that will cause the disturbance or other take of eagles;

2. The species and number of eagles that will be taken and the likely form of that take;

3. Maps and digital photographs that depict the locations of the proposed activity, including the area where eagles are likely to be taken;

4. For activities that are likely to disturb eagles (versus other take),

a. Maps and digital photographs of the eagle nests, foraging areas, and concentration sites where eagles are likely to be disturbed by the proposed activity (including the geographic coordinates of the activity area and important eagle-use area(s) and the distance(s) between those areas);

b. Whether or not the important eagle-use area(s) is visible from the activity area, or if screening vegetation or topography blocks the view; and

c. The nature and extent of existing activities in the vicinity that are similar to the proposed activity, and the distance between those activities and the important eagle-use area(s);

5. The date the activity will start and is projected to end;

6. An explanation of what interests(s) in a particular locality will be protected by the take, including any anticipated benefits to the applicant or to the public;

7. An explanation of why avoiding the take is not practicable, including at a minimum, a description of why take cannot be avoided after taking into consideration, relative to the magnitude of the impacts to eagles, (1) the cost of the remedy comparative with proponent resources; (2) existing technology; and (3) logistics in light of overall project purposes; or

8. For programmatic take, why take is unavoidable; and

9. A description of measures proposed to offset the detrimental impact of the proposed activity on the regional eagle population.

The Service's Ecological Services Field Offices may provide technical assistance prior to development of permit applications. In many cases, the Service may be able to recommend measures to reduce the likelihood of take, negating the need for a permit. The technical assistance that we provide from the field will reduce the number of applications to our permit offices for activities that (1) are unlikely to take eagles, or (2) can practicably be modified to avoid the take. The Service may elect to conduct an on-site assessment to determine whether the proposed activity is likely to take eagles and whether reasonable modifications to the project will alleviate the probability of take. In addition, State and tribal natural resources agencies may also be able to provide information pertaining to the number and location of eagles, eagle nests and other important eagle-use areas within the area potentially affected by the activity.

*Application Evaluation Process.* An initial consideration is whether take is likely to occur. Ideally, most potential applicants whose activities will not likely result in take will be dissuaded from applying for a permit after voluntary technical consultation with a Service field biologist. If, after an application is submitted, the Service determines that take is not likely to occur, we may issue the permit (if permit issuance criteria are met); however, if we do not consider take likely to occur, we will not subtract the authorized take from Regional take thresholds—unless follow-up monitoring reveals that it did actually occur.

Our primary consideration when issuing permits under this regulation is whether the take would be compatible with the preservation of the bald eagle and the golden eagle, including consideration of the cumulative effects of other permitted take and additional factors affecting eagle populations. When evaluating the take that may result from an activity for which a permit is sought (e.g., residential development), we will consider the effects of the preliminary activity (construction) as well as the effects of the foreseeable ongoing future uses (activities associated with human habitation). The impacts and threshold distances that we will consider will not be limited to the footprint of the initial activity if it is reasonably foreseeable that the activity will lead to adverse indirect effects on eagles. For example, when evaluating the effects of expanding a campground, in addition to considering the distance of the expansion from important eagle-use areas, we would consider the effects of increased pedestrian and motor traffic to and from the expanded campground. In many cases, the potential for take could be greater as a result of the activities that follow the initial project. For example, the installation of a boat ramp 500 feet from an important eagle foraging area may not disturb eagles during the construction phase, but the ensuing high levels of boat traffic through the area during peak feeding times may cause disturbance. Trail construction 400 feet from a nest is generally unlikely to take eagles, but if the trail will be open to off-road vehicle use during the nesting season, we would need to consider the impacts of the vehicular activity as part of the impacts of the trail construction.

If demand will exceed regional take thresholds (see above discussion under *Population Assessment and Take Thresholds*), the permit office will need to evaluate how the proposed activity

should be prioritized in accordance with the Regional structured allocation process established to ensure the Service adheres to the prioritization issuance criteria set forth in § 22.26(e) and § 22.27(d)(5) of the regulations.

We must then consider whether the take is associated with the permanent abandonment or loss of a nest site, territory, or other important eagle-use area. In reality, this evaluation would be tied to our primary consideration of whether the take would be compatible with the preservation of the bald eagle or the golden eagle because take associated with the loss of an important eagle-use area will generally have larger population impacts than a single, one-time disturbance. Depending on the magnitude of the impacts, the potential take could exceed the thresholds we establish as necessary to safeguard eagle populations. If so, we must deny the permit unless the applicant commits to compensatory mitigation measures that would offset the take to the level where it is compatible with the preservation of eagles.

Additional evaluation criteria include whether: (1) the take is necessary to protect a legitimate interest in a particular locality; (2) the take is associated with, but is not the purpose of the activity; (3) the take cannot practicably be avoided (or for programmatic authorizations, the take is unavoidable); and (4) the applicant has minimized impacts to eagles to the extent practicable, and for programmatic authorizations, the taking will occur despite application of Advanced Conservation Practices developed in coordination with the Service.

Before issuing a permit, we will consult with federally-recognized tribes if issuance of the permit might affect traditional tribal activities, practices, or beliefs. The Service's obligation to consult on a government-to-government basis with Native American tribes is set forth in Executive Order 13175, Consultation with Indian Tribal Governments (Nov. 6, 2000) and the Service's own ''Native American Policy'' (*http://www.fws.gov/nativeamerican/Graphics/Native_Amer_Policy.pdf*). The areas where eagles would be taken have the potential of being regarded as areas of traditional religious and cultural importance to Indian tribes, commonly referred to as Traditional Cultural Properties (TCP). Eagles are highly significant species for Native American culture and religion, and as such they might be viewed as contributing elements to a TCP. Take of one or more eagles from a TCP area could potentially be considered an adverse effect to the TCP. Eagles also have cultural significance to the wider American public, with the result that the Service will need to consider the concerns of any party with cultural interest in eagles, eagle nests, and eagle habitat under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470). (For more discussion on the NHPA, see our discussion in the **Required Determinations** section below under *National Historic Preservation Act.*)

*Permit Conditions.* Under the Service Mitigation Policy (46 Fed. Reg. 7644-7663, January 23, 1981) and the President's Council on Environmental Quality regulations (40 CFR Part 1508.20 (a-e)), mitigation includes: avoidance, minimization, rectification, reduction over time, and compensation for negative impacts, in this case to bald eagles and golden eagles. Under these regulations, all permittees will be required to avoid and minimize the potential for take to the degree practicable, and for programmatic permits, to the point where take is unavoidable.

Depending on the scale of the take, and the particular circumstances, the Service may require rectification (taking corrective action) and/or reduction over time from some permittees. However additional compensatory mitigation will be required only (1) for programmatic take and other multiple take authorizations; (2) for disturbance associated with the permanent loss of a breeding territory or important traditional communal roost site; or (3) as necessary to offset impacts to the local area population. Because our take permit thresholds are population-based, we have already determined before issuing each individual take permit that the population can withstand that level of take. Therefore, compensatory mitigation for one-time, individual take permits will not typically be necessary for the preservation of eagles. This approach is based on our analysis of *regional* population thresholds, and does not preclude a State or tribe from requiring additional mitigation for impacts authorized by a State or tribal permit or authorization within its jurisdiction. However, we intend to work with States and tribes to ensure that the total mitigation required of applicants by the Service and the State and/or tribe does not exceed what is appropriate to offset impacts to eagles from the proposed activity.

These regulations contain general conditions that will apply to all permits we issue under this section. If the permit expires or is suspended or revoked before the required measures are completed, the permittee will remain obligated to carry out those measures necessary to mitigate for take that has occurred up to that point. Permittees must allow Service personnel, or other qualified persons designated by the Service, access to the areas where take is anticipated, within reasonable hours and with reasonable notice from the Service, for purposes of monitoring eagles at the site(s). Although we do not anticipate the necessity for ongoing monitoring by the Service at the majority of permit locations, we will use the data collected from limited site visits to reevaluate, as appropriate, the recommendations we provide in the guidelines as well as through case-by-case technical assistance to ensure that eagles are adequately protected without unnecessarily hindering human activity.

If a permit is revoked or expires, the permittee must submit a report of activities conducted under the permit to the Service's Regional Migratory Bird Permit Office within 60 days of the revocation or expiration. The permit provides take authorization only for the activities set forth in the permit conditions. If the permittee subsequently contemplates different or additional activities that may take eagles, he or she must contact the Service to determine if a permit amendment is required to retain the level of take authority desired. Additionally, the validity of all permits issued under these regulations is conditioned on the permittee's compliance with all applicable Federal, tribal, State, and local laws and regulations governing the activity. Thus, if conduct of the activity violates State, tribal, or other laws, the Federal authorization granted by this permit is invalid.

We are defining one term in § 22.26 that will apply only to the regulations in that section and not to eagle permits, generally. ''Eagle'' under § 22.26 means ''a live bald eagle (*Haliaeetus leucocephalus*), live golden eagle (*Aquila chrysaetos*), a bald eagle egg, or a golden eagle egg.'' Eagle take under § 22.26 is limited to live birds and eggs, and excludes non-living specimens, feathers, parts, and nests.

We are in the process of developing implementation guidance to address procedural aspects of the permitting process. The guidance will cover time frames for permit issuance; identification of project impacts; appropriate mitigation measures; monitoring; coordination with States, tribes, and other Federal agencies; compliance with environmental reviews; and other specifics of the

permit process, in order to ensure consistency in implementation throughout the Service. We will work with interested States and tribes in developing the implementation guidance, and the general public will also have the opportunity to provide input once we make a draft available through a notice in the **Federal Register**.

*Eagle Nest Take Under 50 CFR 22.27*

Some eagles nest on or near electrical transmission towers, communication towers, airport runways, or other locations where they endanger themselves or create a hazard to humans. Regulations under this section, § 22.27, authorize removal and/or relocation of active and inactive eagle nests in what we expect to be the rare cases where genuine safety concerns necessitate the take. Examples include: (1) a nest tree that appears likely to topple onto a residence; (2) at airports to avoid collisions between eagles and aircraft; and (3) to relocate a nest built within a reservoir that will be flooded. Compensatory mitigation will sometimes but not always be required when nests must be removed for safety emergency purposes.

This permit will also be available to take *inactive* nests only, in three additional types of situations. First, we may issue a permit to remove an inactive eagle nest where, although the presence of the nest does not create an immediate safety emergency, the take is necessary to ensure public health and safety. For purposes of this regulation, ''necessary to ensure public health and safety'' means ''required to maintain society's well-being in matters of health and safety.'' For example, if the take would be compatible with the preservation of the eagle, and there is no practicable alternative to nest removal, a permit could be issued under this section to remove an inactive eagle nest located in the only feasible site for a hospital that is needed in a particular locality.

Second, a permit may be issued to take an inactive nest that is built on a human-engineered structure and creates a functional hazard that renders the structure inoperable for its intended use. For example, recently in Alaska, a pair of bald eagles nested on a crane that was temporarily not being used by the crane operator. Under these regulations, after waiting out the eagles' breeding cycle, the crane operator could be issued a permit to remove the inactive nest and reclaim the use of his crane.

Finally, the nest could be removed for an activity that will provide a net benefit to eagles, or for any purpose if the permittee conducts or secures mitigation measures that more than offset the impacts of removing the nest, creating a net benefit to eagles. For example, we may issue a permit to take a nest where necessary to carry out a habitat restoration project that will enhance habitat for eagles. Also, a homeowner could potentially obtain a permit to remove one of multiple nests in a territory, one which has not been used for several years, if compensatory mitigation measures will produce a net benefit to eagles (e.g., the landowner donates a permanent conservation easement to protect the riparian area where the nesting pair and wintering eagles traditionally forage). The scale of mitigation will depend on the degree of biological impact. To remove a nest from what is apparently the only viable nest site in a territory would have a greater biological impact than in the example just provided, and more mitigation might be necessary in order to realize a net benefit to eagles.

Where the nest would be taken for purposes other than to alleviate an immediate threat to safety, two additional criteria must be met before we may issue the permit. First, we may not issue the permit unless alternative suitable nesting and foraging habitat is available. Second, compensatory mitigation is required in every case.

Except for applications associated with safety emergencies, prior to authorizing nest removal, we will review the availability of potential alternative suitable habitat (nest substrate, foraging areas, etc.) and the distance to those areas, in order to reasonably assess the likelihood of total loss of the territory. When known, we will consider such factors as the number of nests in a particular breeding pair's nesting territory and the last known date when the nest under consideration for take was used, in order to try to assess the relative value of the nest to the breeding pair. We will also consider the density of surrounding territories and the nests within those territories to evaluate the ability of the area to support a displaced pair and assess whether the loss of a particular nest may have negative local population impacts. For overall permit management, we will consider local-area population effects within the species-specific natal dispersal distances (43 miles for bald eagles, 140 miles for golden eagles). However, we believe it would be too burdensome to ask the proponent to provide data on that large a scale. We have found, in implementing the resource-recovery permit for take of inactive golden eagle nests (50 CFR 22.25), that data within a 10-mile radius of the nest provides us with adequate information to evaluate many of the factors noted above.

Where practicable, nests should be relocated, or a substitute nest provided, in a suitable location within the same territory from which they were removed to provide a viable nesting site for breeding purposes of eagles within that territory, unless such relocation would create a similar threat to safety. Permits may also be issued to remove nests when it is determined by the Service that the nests cannot be relocated.

We may issue programmatic nest take permits under this section if the permittee commits to comprehensive measures (ACPs) to reduce the need for take. For example, programmatic authorization could be an appropriate means of authorizing take at airports that, despite scientifically-based measures developed in coordination with the Service to reduce take, cannot completely avoid some take in the form of disturbance and emergency nest removal (when nests are discovered despite diligent efforts to prevent eagles from occupying the area). Authorizing programmatic nest take, where such comprehensive measures are being taken by airports to reduce take, will help to minimize ''last minute'' nest removal emergencies, thus providing better protection from liability for the airports and enhanced protection of eagles.

We envision that there will be a need for permits that combine the two types of authorizations we are creating through this regulation (§ 22.26 and § 22.27), and perhaps additional authorizations as well. In such cases, we will usually issue one permit with dual (or multiple) authorizations. For example, to ensure safety at airfields, we would evaluate the airfield's wildlife hazard management plan to determine if it uses a progressive approach that starts with measures to reduce the presence of features attractive to eagles and ends with nest removal as a final option. If the management-plan components are adequate for protection of eagles, they would then become part of the permit conditions. The programmatic permit will not require re-application each year, but may be valid for up to 5 years, at which time the applicant could submit a request for renewal. There are annual reporting requirements and an option for the Service to re-evaluate the permit conditions if more take is occurring than anticipated. A permit such as described would be issued under the multiple authorities of existing § 22.23 (as revised by this rulemaking to extend permit tenure), new § 22.26, and new § 22.27.

As with other eagle take permits, nest take permits issued under § 22.27 will be subject to the take thresholds discussed earlier and more fully in the final environmental assessment of this action.

Similar to our approach to § 22.26 and some other recent Service regulations, we have not codified the application requirements within the regulation so we can more easily modify them based on new information and public input gathered through the triennial OMB information collection process (see above discussion under § 22.26, *Permit Application Process*). The current application form we will use for this regulation requires applicants to submit the following information:

(1) The number of nests proposed to be taken, whether the nest(s) is a bald eagle or golden eagle nest, and whether the nest(s) is active or inactive; and if known, whether it has been active in the 5 preceding breeding seasons.

(2) Why the removal of the nest(s) is necessary, including the interest to be served in a particular locality;

(3) A description of the property, including maps and digital photographs that show the location of the nest in relation to buildings, infrastructure, and human activities;

(4) The location of the property, including latitude and longitude;

(5) The length of time for which the permit is requested, including beginning and ending dates;

(6) A statement indicating the intended disposition of the nest(s), and if active, the nestlings or eggs;

(7) A calculation of the bald eagle or golden eagle area nesting population, including an appropriately-scaled map or plat showing the location of each eagle nest used to calculate the area nesting population unless the Service has sufficient data to independently calculate the area nesting population. (Not applicable for immediate safety emergencies.)

(8) A description of the avoidance, minimization, and mitigation measures the applicant proposes to reduce take and offset the detrimental impact of the permitted activity. (Not applicable for immediate safety emergencies.)

Even though the application form does not require applicants to describe proposed mitigation measures in cases of safety emergencies, we may require compensatory mitigation as a permit condition if appropriate to offset the detrimental impacts to eagles.

*New and Modified Definitions Under 50 CFR 22.3*

These regulations revise three definitions and codify 13 new terms in § 22.3, the section of eagle permit regulations that defines terms and is applicable to all eagle permit regulations in part 22. We amend the regulatory definition of ''take,'' to add the term ''destroy,'' to apply to bald eagle nests, to ensure consistency with the Eagle Act's intention to prohibit unpermitted eagle nest destruction. We define ''eagle nest'' as a ''readily identifiable structure built, maintained, or used by bald eagles or golden eagles for breeding purposes.'' This definition is based on, and replaces, the existing ''golden eagle nest'' definition, in order to apply with respect to both species. We are removing the existing definition of ''golden eagle nest'' from the list of definitions.

Similarly, this rule replaces the old definition ''inactive nest'' with a new definition that differs primarily insofar as it includes bald eagles as well as golden eagles. The new definition reads: ''a bald eagle or golden eagle nest that is not currently being used by eagles as determined by the continuing absence of any adult, egg, or dependent young at the nest for at least 10 consecutive days immediately prior to, and including, at present. An inactive nest may become active again and remains protected under the Eagle Act.'' All nests are protected by the Eagle Act, whether active or inactive, and the take of any nest requires a permit. The reason for distinguishing between active nests and inactive nests and for defining the term ''inactive nest'' is because the new nest-take-permit regulation, as well as existing regulations for take of golden eagle nests for resource development and recovery operations (50 CFR 22.25), regulate nests differently depending on whether they are currently active or inactive. Under existing § 22.25, a permit may be issued only for inactive nests. Under the regulations being finalized by this rulemaking, a permit can be issued for an active nest only if the location of the nest poses an immediate threat to safety. This definition is intended to be applied only to questions of whether or not a nest may be taken with reduced risk of associated take of birds. It is not intended to convey any other biological status, nor will it be the only criterion for permit evaluation.

We are codifying the term ''important eagle-use area'' in these permit regulations under § 22.26 to refer to nests, biologically important foraging areas, and communal roosts where eagles are potentially likely to be taken as the result of interference with breeding, feeding, or sheltering behaviors. We define ''important eagle-use area'' as ''an eagle nest, foraging area, or communal roost site that eagles rely on for breeding, sheltering, or feeding, and the landscape features surrounding such nest, foraging area, or roost site that are essential for the continued viability of the site for breeding, feeding, or sheltering eagles.'' This term refers to the particular areas, within a broader area where human activity occurs, where eagles are more likely to be taken (e.g., disturbed) by the activity because of the higher probability of interference with breeding, feeding, or sheltering behaviors at those areas.

To clarify terms used within the definition of ''important eagle-use area,'' we define ''foraging area'' to mean ''an area where eagles regularly feed during one or more seasons.'' We define ''communal roost site'' as ''an area where eagles gather repeatedly in the course of a season and shelter overnight and sometimes during the day in the event of inclement weather.'' Not all foraging areas and communal roost sites are important enough such that interfering with eagles at the site will cause disturbance (resulting in injury or nest abandonment). Whether eagles rely on a particular foraging area or communal roost site to that degree will depend on a variety of circumstances—most obviously, the availability of alternate, suitable sites for feeding or sheltering.

''Territory'' is defined as ''a defended area that contains, or historically contained, one or more nests within the home range of a mated pair of eagles.'' ''Cumulative effects'' means ''the incremental environmental impact or effect of the proposed action, together with impacts of past, present, and reasonably foreseeable future actions.'' We define ''indirect effects'' as ''effects for which a proposed action is a cause, and which may occur later in time and/or be physically manifested beyond the initial impacts of the action, but are still reasonably likely to occur.''

The regulations include the requirement that an applicant have avoided and minimized impacts to eagles to the maximum extent practicable. ''Practicable'' is defined as ''capable of being done after taking into consideration, relative to the magnitude of the impacts to eagles (1) the cost of remedy comparative with proponent resources; (2) existing technology; and (3) logistics in light of overall project purposes.'' For programmatic permits, the comparable standard is ''maximum degree achievable,'' defined as ''the standard at which any take that occurs is unavoidable despite implementation of Advanced Conservation Practices.''

''Necessary to ensure public health and safety'' is one criterion for obtaining a nest removal permit, and it is a criterion for prioritization in the regulations for both new permit types if demand exceeds take thresholds. We define it as ''required to maintain society's well-being in matters of health and safety.'' ''Safety emergency'' means ''a situation that necessitates immediate action to alleviate a threat of bodily harm to humans or eagles.'' Safety emergencies take precedence over take that is merely necessary to ensure public health and safety (as does take necessary for Native American religious use and renewal of programmatic permits). We may issue a permit to remove an active eagle nest in a safety emergency, but not for any other purpose.

We are defining ''programmatic take'' as ''take that (1) is recurring, but not caused by indirect effects (2) occurs over the long term and/or in a location or locations that cannot be specifically identified.'' We define ''programmatic permit'' as ''a permit that authorizes programmatic take.'' A programmatic permit can cover other take in addition to programmatic take. We can issue programmatic permits for disturbance and as well as take resulting in mortalities, based on implementation of ''advanced conservation practices'' developed in coordination with the Service. ''Advanced Conservation Practices'' means ''scientifically-supportable measures that are approved by the Service and represent the best-available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable.''

Since § 22.26 does not apply to nests or non-living eagle parts, with regard to that section, we define ''eagle'' to mean only live eagles or eggs. This definition does not apply within any regulations other than § 22.26.

*Revisions to Permit Regulations at 50 CFR 22.28*

On May 20, 2008, the Service published regulations creating a new permit category at 50 CFR § 22.28 to provide expedited Eagle Act permits to entities authorized to take bald eagles through ESA section 7 incidental take statements (73 FR 29075, May 20, 2008). That new permit category applies to past section 7 take statements as well as any that may have been issued after the rule took effect. (e.g., for take of Sonoran Desert nesting bald eagles, or if bald eagles or golden eagles were ESA-listed in any other portion of their respective ranges). Now that a permit is available to authorize eagle take not associated with an ESA take authorization, for purposes of accountability and consistency, the same process and procedures should be used to authorize take under the Eagle Act regardless of whether it was also exempted under ESA section 7. Accordingly, as part of the regulations we are promulgating today, we are amending the regulations at § 22.28 to restrict their application to section 7 incidental take statements issued prior to the date today's rule becomes effective. For any incidental take exempted under ESA section 7 that is authorized after the date specified in DATES and that also constitutes take under the Eagle Act, the only permit that is available to provide Eagle Act take authorization is the § 22.26 permit being finalized herein. Therefore, except for take authorized through ESA section 10 permits (which confer authority to take under both the ESA and the Eagle Act under the new provision at 50 CFR § 22.11), any take we authorize that is associated with, but not the purpose of an activity, would be provided under the single regulatory authority we are finalizing today, 50 CFR § 22.26, rather than 50 CFR § 22.28.

*Revisions to Information Collection Requirements at 50 CFR 22.4*

This section describes the requirement that Federal information collections, such as permit applications and report forms related to Federal permits, be reviewed and approved by the OMB. It also provides the approval number(s) (OMB Control Numbers) for the forms used to collect information related to eagle permits. We are removing the language describing the average reporting burden for all the collections related to eagle permits because that figure varies as new forms are added or removed and we are no longer required to provide this estimate.

*Revisions to General Permit Conditions at 50 CFR 13*

As part of establishing the new permit authorizations under 50 CFR 22.26 and 22.27, we amend 50 CFR 13.12 to add the new permit types to be issued under 50 CFR 22.26 and 22.27. We also amend 50 CFR 13.11(d), the nonstandard fee schedule, to establish application-processing fees (user fees) for the permits. The general statutory authority to charge fees for processing applications for permits and certificates is found in 31 U.S.C. 9701, which states that services provided by Federal agencies are to be ''self-sustaining to the extent possible.'' Federal user-fee policy, as stated in OMB Circular No. A-25, requires Federal agencies to recoup the costs of ''special services'' that provide benefits to identifiable recipients. Permits are special services authorizing identifiable recipients to engage in activities not otherwise authorized for the general public.

For the standard § 22.26 take permit and the § 22.27 nest take permit, we will assess a $500 permit application fee and a $150 permit amendment fee. For programmatic permits under either permit type, the application fee is $1,000 and the amendment fee is $500. While higher than many other Service permit application processing fees, these fees are comparable to those assessed for other migratory bird permits relative to the level of review necessary to process and evaluate an application for a permit to take eagles or to remove eagle nests under the authorities of the Eagle Act.[2] Furthermore, we expect these fees to make up less than half the permit-processing costs to the Service.

The typical permit-application process will be less burdensome for the applicant than the permit process under the ESA, since an HCP is not required. Preparing an HCP can be time-consuming and is usually delegated to a professional consultant. HCPs often cover large geographic areas—some larger than a million acres—and set forth terms and mitigation measures designed to protect species for up to 100 years. In contrast, the information required to apply for an individual Eagle Act permit does not include an extensive habitat analysis, is easier to compile, and will require less information, since permits will be valid for no more than five years.

Service biologists at GS-11 to 13 grade levels on the Office of Personnel Management General Pay Schedule, with support of GS-7 staff, would be responsible for pre-application technical assistance; reviewing and determining the adequacy of the information provided by an applicant; conducting any internal research necessary to verify information in the application or evaluate the biological impact of the proposed activity; assessing the biological impact of the proposed activity on the bald or golden eagle; evaluating whether the proposed activity meets the issuance criteria; preparing or reviewing NEPA documentation; determining consistency with other laws such as the

[2] The notable exception is the permit-application-processing fee for take of golden eagle nests for resource recovery and development operations under 50 CFR 22.25, which is currently set at $100. We intend to propose a regulation in the near future to raise the processing fee to a level commensurate with the processing fees for the new § 22.27 nest take permit.

section 106 of the NHPA; coordination and consultation with States and tribes; and preparing either a permit or a denial letter for the applicant. To evaluate the impact of the proposed activity, Service biologists may also need to visit the location to examine site-specific conditions.

Programmatic permits will take considerably longer to craft and process. We expect most industry-wide or agency-wide standard practices for programmatic permits would be developed with the respective entities and Service staff who work on policy development in the Washington Office, in coordination with Service Regions. We anticipate that some programmatic permits, particularly early ones will require the Service to convene and lead meetings of workgroups representing the entities seeking permits. The workgroups would develop metrics for establishing/quantifying baseline effects through estimates or a sampling scheme; identify the best-available techniques and mutually-approved standard practices for minimizing the likelihood of take of eagles; and develop standards for system or program risk analyses, guidance for determining reasonable timeframes for completion of any required retro-fitting, standards and guidelines for effective monitoring programs and reports of eagle take to the Service, and measurable criteria for evaluating the implementation and efficacy of practices. Over the long term, we estimate it will take about 100 Service staff hours to process the average programmatic take permit. The programmatic permits we develop initially will likely take longer, as will large-scale and more complex programmatic permits. Those may take up to 400 Service staff hours to prepare.

We estimate it will cost the Service approximately $1,750 to process the average § 22.26 permit application, including $940 for pre-application technical assistance from Field Office biologists, and $810 for the Regional Migratory Bird Permit Office once it receives the application. For § 22.27 permits, we estimate the cost to the Service to be $1,950. We estimate it will cost the Service about $650 to amend the average permit. The average programmatic permit application under either § 22.26 or § 22.27 is likely to cost the Service $5,000. We estimate the average cost to the Service for substantive amendments to programmatic permits to be $1,500. These estimates include technical assistance provided by the Field Office, as do the hourly estimates below.

On average, we estimate that it will take Service employees approximately 42 hours to process each individual § 22.26 permit application, approximately 46 hours for each § 22.27 permit application for take of an eagle nest, and approximately 120 hours for a programmatic permit under either permit type. Therefore, an application fee of $500 will offset only about 28% of the cost to the Government of responding to a request for a § 22.26 and about 25% of the cost of processing a § 22.27 nest-take-permit application. The $150 standard amendment fee will make up about 27% of the Service's costs. The $1,000 programmatic permit application fee will recoup about 20% of the permit processing cost to the Service. The $500 programmatic-permit amendment fee will recoup about 33% of the cost to the Service. Although these fees are not high enough to allow the Service to recoup even half the cost of issuing them, they are significantly higher than other permit application processing fees we assess. The fees associated with these regulations must be manageable to small business owners, home owners, and other members of the public who may find a higher fee prohibitive.

*Economic Analysis*

A brief assessment to clarify the costs and benefits associated with this rule follows:

*Change.* This rule will provide for the authorization of activities that take bald eagles and golden eagles under the Bald and Golden Eagle Protection Act (Eagle Act). Under the rule, the public will have the opportunity to apply for permits to authorize the take of bald eagles and golden eagles under the Eagle Act. Some incidental take of eagles was previously authorized under the Endangered Species Act, primarily bald eagles covered by an incidental take statement issued pursuant to ESA section 7. Some bald eagle take was authorized under ESA section 10 incidental-take permits. Twelve ESA section 10 permits authorized take of golden eagles as covered listed species. However, ESA take authorization for eagles has not been issued in Alaska, where neither species of eagles was ever listed under the ESA. Thus, any authorization for take in Alaska would be newly available. Authorizations for take of bald eagles and golden eagles are expected to increase from what was authorized under the ESA.

*Baseline.* The costs and benefits will result from (1) the authorization of take of bald eagles and golden eagles throughout the United States under § 22.26, and (2) the number of permits for take of bald eagle and golden eagle nests throughout the United States under § 22.27.

*Costs Incurred.* In general, the costs incurred due to the rule would relate to the costs of assembling the necessary information for the permit application, permit fees, and the costs of monitoring and reporting requirements associated with the permit. As explained below, it is difficult to predict the number of applications the Service should anticipate under these regulations. However, due to various factors, we expect that demand for eagle-take permits will increase, from about 54 authorizations per year under the ESA to approximately 910 permits per year under the two new Eagle Act permit regulations. Therefore, using the current number of authorizations issued under the ESA as a baseline, approximately 856 permit authorizations would be new.

Some of these entities (those that are non-governmental) would bear the higher permit application fees under the Eagle Act as compared to the current fee for an ESA incidental-take permit (to capture a more equitable share of the costs to the Service that would otherwise be borne by taxpayers), although many applicants will be State, local, tribal, or Federal agencies, which are exempt from application processing fees for Service permits. Costs for other aspects of the permit-application process will generally be lower than costs associated with the ESA section 10 permit application process (e.g., less information needs to be compiled and provided to the Service as part of this permit application versus the requirement to create a Habitat Conservation Plan (HCP) under the ESA).

We are establishing a $500 permit application processing fee for the standard § 22.26 take permit and standard § 22.27 nest-take permit. Each of these permit categories will require a $150 fee for permit amendments. Programmatic permits under both regulations require a $1,000 processing fee and a $500 amendment fee. We anticipate receiving about 1,120 take permit applications under § 22.26 nationwide annually, and 20 applications for programmatic permits under § 22.26. We estimate receiving 70 nest-take-permit applications under § 22.27 and 20 applications for programmatic nest-take permits. (We anticipate that we will issue permits in response to the majority of these applications, particularly the programmatic permit applications, because applicants will already have coordinated with the Service before applying for a permit, and many project proponents will have either adjusted their projects so as not to need a permit

or concluded that a permit will not be issued for the take associated with the proposed project. The remaining potential applicants are those who are likely to need and qualify for a permit.) Approximately 60 standard permits and 16 programmatic permits may need amendment annually.

We expect about half of the applicants for both types of permits to be Federal, State, local, or tribal governments, none of which are required to pay a permit-application processing fee or amendment-processing fee. Therefore, we estimate that annual application fees and amendments will total approximately $320,000 (560 permit applications under § 22.26 x $500 fee, + 35 nest-take-permit applications under § 22.27 x $500 fee, + 20 programmatic permit applications x $1,000 fee, + 30 standard amendments x $150 amendment fee, + 8 amendments to programmatic permits x $500 amendment fee). There is no fee for processing annual reports.

These permit fees would be new costs related to this rule. There may be additional costs associated with the permit process, which may include mitigation costs and, if the applicant engages a consultant or attorney, consultant and legal fees. The information required to apply for an individual Eagle Act permit is less extensive and easier to compile than permits under the ESA. Information such as latitude and longitude are publicly available (e.g., Google Earth). The majority of people will be able to submit this information to the Service without the need to hire a consultant, especially with the help of local and State government staff who may be willing to provide assistance with location and distance information between the project and the eagle nest or use area. The Service will direct applicants to available, free or inexpensive tools and services for obtaining the necessary information.

Larger project proponents may prefer to hire consultants. Consultant fees could range from $300 to many thousands of dollars, depending on the scale of the project, but presumably still would be cost-effective, as compared to avoiding the take, since the choice is the applicant's to make. In many cases, for larger projects, project proponents will have hired consultants to address a multitude of other factors unrelated to impacts to eagles, so additional costs related to Eagle Act authorizations would be minimal.

We anticipate that there will be many instances where project proponents approach the Service, and based on preliminary coordination with us, adjust project plans to reduce the likelihood of take to the point where no permit is needed, and none is therefore issued. Some costs will be associated with this process. However, these costs are not the result of this permit regulation, but stem from the statutory prohibitions against taking eagles.

Costs may have been incurred related to current projects that are in process and are delayed and potential projects that were not initiated due to the lack of availability of ESA permits during the period after the bald eagle was delisted in most parts of the lower 48 States and prior to Eagle Act take permits becoming available under this rule. These costs would be attributed to the determination to delist the bald eagle. Therefore, this analysis does not quantify these costs.

In addition to costs to the public, the Service will incur administrative costs due to this rulemaking. We do not have a firm basis on which to confidently predict how much demand there will be for permits under these regulations. We estimate that the number of eagle-take permits will increase under the rule from an average of 54 authorizations previously issued under the ESA, to 830 Eagle Act § 22.26 take permits, 40 nest-take permits issued under § 22.27, and 40 programmatic permits issued under both regulations, annually. We expect an increase because: (1) many smaller projects will no longer be able to get under the ESA section 7 ''umbrella'' of a Federal project when seeking authorization to take bald eagles; (2) following delisting, it is now more acceptable and less burdensome to get a permit to take eagles; (3) most bald eagle populations are increasing; (4) permits will be available for golden eagle take, and (5) ESA take permits were not issued in Alaska, but Eagle Act permits may be issued there under these permit regulations.

The cost of issuing most permits will decrease, but many authorizations similar to those we previously granted under section 7 of the ESA (where the consultation covered numerous species in addition to bald eagles) would now require the issuance of an Eagle Act permit in addition to a biological opinion. On average, we estimate it will cost the Service approximately $1,750 to process the average § 22.26 permit application (including pre-application technical assistance). Assuming approximately 1,120 permit applications under § 22.26, 70 nest-take-permit applications under § 22.27, 40 programmatic permit applications, 60 standard permit amendments, and 16 programmatic amendments, per year, the annual costs associated with processing permit applications to the Service would total approximately $2,348,500 (1,120 x $1,750 for § 22.26 permit applications, + 70 x $1,950 for § 22.27 nest-take-permit applications, + 40 x $5,000 for programmatic-permit applications, plus 60 x $600 for standard amendments, plus 16 x 1,000 for programmatic amendments).

The Service will also incur the cost of providing technical assistance, even where no permit is issued. The workload associated with each such consultation will generally be less than for situations where a permit is issued, but it will often be substantial. We estimate the average technical consultation will require 20 hours of staff time, and we anticipate the number of such consultations not resulting in permits will be about 800 per year, resulting in $628,000 in increased costs to the Service from technical consultations. All estimated costs for staff time include salary and benefits.

Overall, we estimate that new administrative costs for the Service to implement this rule will be over $3 million per year, including the costs to Regional and Field Offices for actual implementation of the permit program, plus costs associated with the development and maintenance of the program (e.g., training, developing implementing policies, responding to Freedom of Information Act requests, budget formulation, etc.), which will be borne by the Service's Migratory Bird and Ecological Services program offices.

*Benefits Accrued.* Under the rule, benefits to the public will accrue from issuance of permits to take bald eagles and golden eagles throughout the United States. In general, benefits will include increased value in land that can now be developed or harvested for timber, as well as the elimination of the risk and future costs associated with the potential unpermitted take of eagles that could occur from the development activities. Benefits will depend on the level of potential future growth associated with the authorized permit activity.

Only minimal take of golden eagles (as covered non-listed species in HCPs) has been authorized under the ESA prior to proposing this rule. However, because population data indicate that take of golden eagles should be extremely limited, we anticipate issuing only a minimal number of new take authorizations for golden eagles under these new regulations. Some take of golden eagles throughout the United States that may be authorized by these regulations may result in new development and activities that could not have proceeded legally without this

rule. We expect that economic benefits may accrue as a result of the implementation of this rule for oil and gas development operations, farming and ranching operations, mining companies, utilities, the transportation sector, and private land owners.

Overall, we anticipate issuing approximately 910 take permits per year, under both regulations. We have completed a final environmental assessment (FEA) of the effects of this rulemaking, which is available on our website at *http://www.fws.gov/migratorybirds/baldeagle.htm*). Under the FEA, we developed take thresholds that will guide permit issuance to ensure that take is compatible with the preservation of the bald eagle and the golden eagle. As a result, we anticipate that the amount of take that will be requested and authorized under this permit regulation will not significantly affect bald or golden eagle populations.

**Response to Public Comments**

Unless otherwise noted, each subject heading includes all substantive comments we received on both the June 5, 2007, proposed rule and the proposed revisions to the rule noted in our August 14, 2008, notice re-opening of the comment period on the rule and announcing the availability of the DEA. We are responding to the comments concerning the environmental analysis, population modeling, take thresholds, and other aspects of the DEA in the FEA. Copies of the FEA are available at *http://www.fws.gov/migratorybirds/baldeagle.htm*.)

*Populations and Take Thresholds.*

(The comments addressed under this heading were all made on the June 5, 2007, proposed rule. Comments addressing populations and take thresholds that we received after release of the draft environmental assessment are addressed in the FEA.)

*Comment:* The use of the Partners in Flight (PIF) threshold for rate of population decline beyond which permits would not be issued is inappropriate. The PIF threshold is unacceptable because it amounts to a 15% loss over 30 years.

*Service response:* The final regulation caps the number of permits we can issue with thresholds designed to ensure increasing or stable breeding populations. Our reasoning is based on the fact that steady declines, even as small as 0.54% annually, the rate we proposed in the June 5, 2007, proposed rule (72 FR 31141), will cumulatively result in an unacceptably large decrease in population over time. Accordingly, we are establishing take thresholds consistent with the goal of stable or increasing breeding populations.

Therefore, for purposes of this regulation, ''compatible with the preservation of the bald eagle and the golden eagle'' means ''consistent with the goal of stable or increasing breeding populations.'' Although take thresholds are based on regional populations, the regulation requires the Service to consider additional factors, such as cultural significance, that may warrant protection of smaller and/or isolated populations within a region.

We anticipate no more than modest increases in bald eagle populations in the future. We have no evidence at this time that leads us to expect any increase in golden eagle populations. Golden eagles appear more likely to experience declines, due to loss of prey base, disturbance, and loss of habitat due to resource extraction activities, and other factors. For more discussion on population thresholds, see our FEA of this action.

*Comment:* The appropriate population threshold on which to base the number of permits that can be issued (to be compatible with the preservation of the bald eagle and the golden eagle) should be ''no negative impact on the eagle's population growth rate.''

*Service response:* We disagree with this comment. Even if considered a desirable goal, maintaining the same growth rate indefinitely is unrealistic. How large a population is ideal for either species of eagle depends on a range of factors, but as with any other species, there are ecological limits that weigh against and ultimately prevent continuous growth. Although we do not predict either species of eagle will become overabundant in the foreseeable future, some regional populations of bald eagles will likely level out after reaching an ecologically-sustainable size. To prohibit human activity within those areas because the growth rate of eagles has slowed would overly burden people without any benefit to eagles.

*Comment:* The Service should clarify the relationship between the permit regulation and the draft bald eagle post-delisting monitoring plan (PDMP). The PDMP data will not be adequate for purposes of detecting the rate of decline the Service will use for permitting purposes, and neither will the other monitoring sources referenced in the rule. The Service should instead apply a harvest model that takes into consideration current population trend and assumes that permits issued will result in take.

*Service response:* We acknowledge that our description in the June 5, 2007, proposed rule of how we intended to analyze appropriate levels of take was not as clear as it could have been (72 FR 31141). Our intent was always to use modeling, similar to harvest modeling we conduct for other migratory bird species.

The PDMP is a national-level monitoring plan designed to detect declines that would merit reconsideration of the bald eagle as threatened or endangered under the ESA, whereas the population trends on which we would base take thresholds under this take permit regulation will be smaller in scale and at levels that are below the detectability of the PDMP.

To establish take thresholds for this permit regulation, we will rely on the best data we can obtain, including the sources noted in the proposed rule. We will use models to ascertain how much take could be permitted before causing impacts to eagle populations that would not be compatible with the preservation of the species. If we have inadequate data to run the models and no other means of assessing the status of the population where the take will occur, we may not be able to determine that the take is compatible with the preservation of the species. If we are unable to make that determination, we cannot authorize take under the Eagle Act.

*Comment:* Take thresholds should be assessed based on the national population as a whole. (The commenter did not provide a basis for this recommendation.)

*Service response:* Under the ESA, listing and delisting decisions must be made purely on the basis of the ''best scientific and commercial data available.'' Effects on the economy are excluded from the analysis, as are other human social or cultural values beyond those furthered by the ESA. Because the Eagle Act is not delimited by such statutory constraints, and because protecting regional and local populations of bald eagles and golden eagles is culturally important to the American people, this regulation interprets compatibility with the preservation of the species to include maintaining regional and locally-important populations. Take thresholds would be based on modeling of regional population data, but within a regional population, as part of our evaluation of take applications, we will take into consideration factors that may warrant protection of more localized populations, including the cultural significance of a local population.

*Comment:* In addition to the nine bald eagle management populations mentioned in the proposed rule, the

Service needs to assess eagle populations by State and NABCI bird conservation area, or local areas. Otherwise some regional and local populations would be threatened. Local populations can be of unique importance, including to the public.

*Service response:* We are using the NABCI bird conservation regions (BCRs) to manage golden eagle populations, further broken down by portion of BCR within each Service Region. For bald eagles, we are not using nine management populations as we referred to in the proposed rule. Instead, to establish management populations for bald eagles, we used natal populations to look at distribution across the landscape, allowing us to determine rough natural ''boundaries'' between regional eagle populations. Because the management populations delineated by this approach roughly correspond to the Service's organizational structure made up of 8 Service Regional Offices, we will manage bald eagles using populations within Service Regions, with some adjustments, explained in more detail in the FEA.

Regarding the concern that local populations will not be adequately protected, as part of our evaluation of take applications, we will take into consideration biological and human-induced pressures on, and cultural significance of, more localized populations. In evaluating whether the take is compatible with the preservation of the eagle, we must consider cumulative effects, which will help ensure adverse impacts are not concentrated in one locality.

*Comment:* The regulations should explicitly state that permits will be denied if the population declines to the threshold level.

*Service response:* The regulations explicitly state that before issuing a permit, the Service must determine that the take is compatible with the preservation of the bald eagle or the golden eagle, which is the statutory mandate. If data indicate populations at either national or regional scales are declining, depending on the source and severity of the decline, the Service may establish lower take permit thresholds where appropriate or suspend permitting until data confirm the population can support take.

*Comment:* The Service provides no assurances that bald eagles in Arizona will be protected. Arizona bald eagles must be considered separately.

*Service response:* As explained in greater detail within our FEA, we will not issue permits that would result in declines in the Sonoran Desert bald eagle population. Permit thresholds for all regions of the U.S. will be consistent with the goal of stable or increasing breeding populations.

*Comment:* The proposed rule stated that, if populations decline to the threshold level, the Service will refrain from issuing permits ''until such time that the take would be compatible with the preservation of the bald or golden eagle.'' That statement should be amended to add ''unless human life may be impacted.''

*Service response:* Depending on what factors are responsible for the decline and whether the decline is likely to be short-term (part of a recurring population cycle) or long-term, the Service may not need to suspend permit issuance, and may merely reduce the number of permits issued. However, if the breeding population is reduced to the degree that issuance of a permit would be incompatible with the preservation of the bald eagle or the golden eagle, we cannot issue that permit and remain in compliance with the Eagle Act, which authorizes the Secretary of the Interior to issue take permits only if he finds that the take would be compatible with the preservation of the bald eagle or golden eagle (16 U.S.C. 668a). Fortunately, in the majority of cases, emergency take will meet that standard, since many threats to human life that could be caused by eagles may also threaten the eagles themselves. For example, if for human safety purposes, a utility needed to remove a nest to prevent an electrical fire or an airport needed to haze eagles to prevent them from nesting near runways, the authorized take would prevent both eagle and human mortalities. Because issuing a permit in these types of situations would prevent harm to the eagle, the action would be compatible with the preservation of the eagle.

Nevertheless, to ensure that safety emergencies can be legally redressed, we are adding issuance criteria to the regulations to ensure that take associated with safety emergencies is given priority over take for any other purpose.

*Comment:* The statement that permits will be issued on a limited basis raises concerns that a predictable incidental take process will not be available.

*Service response:* The Service has the responsibility to implement certain laws that protect wildlife, including eagles. The Eagle Act contains a mandate that take of eagles be compatible with the preservation of the species. Unlimited authorizations for take would be compatible with the preservation of the bald eagle and the golden eagle only if demand for permits remains below the level that would cause population declines. If demand is higher than that threshold, we must limit the number of permits we issue. Hence, the availability of permits will depend on the level of demand and the availability of reliable data reflecting healthy eagle populations. In addition, the process will be predictable in that the take thresholds for each year in each region will be known.

*Comment:* Since the Service cannot issue permits unless the take will be compatible with the preservation of the species, meaning that permits cannot be issued without adequate data, the Service should consider either requiring permittees to contribute to monitoring efforts, or making the availability of permits expressly contingent on there being in place a monitoring program sufficiently rigorous to detect the threshold decline upon which permit issuance will be predicated.

*Service response:* As discussed earlier in the preamble, and more fully in the FEA, we have reduced initial take thresholds for both species, capping permitted take for bald eagles at 5% of estimated annual productivity and for golden eagles at historically-authorized take levels. This more conservative approach will buffer the natural variability in vital rates affecting population trends and, perhaps more importantly, ensure against gaps in our data.

*''Other interests in a particular locality''*

*Comment:* The Service states that the Eagle Act's authority for granting the proposed permits stems from the Act's provision that the Secretary of the Interior may issue permits ''for the protection of wildlife or of agricultural or other interests in a particular locality.'' The final rule must define ''other interests.'' Without doing so, the rule is an overbroad interpretation of the Eagle Act because it ignores the fact that ''other interests'' is associated with ''wildlife'' and ''agricultural'' interests, and does not comport with the remainder of the statute's provisions restricting the purposes for which take can be authorized.

The proposal is not consistent with the Eagle Act because it would authorize take for any purpose or activity, whereas the statute clearly intended to limit the purposes for which take could be authorized. Furthermore, the proposal fails to show what ''other interests'' have been jeopardized by the long-standing legal prohibition on taking eagles. At the very least, the Service needs to delineate what ''other interests'' will qualify for the permit. The proposal's over-broad interpretation

of ''other interests,'' would allow permits for a vastly broader range of purposes than is currently authorized under the MBTA, which is nonsensical, since the Eagle Act clearly restricts take to certain purposes, whereas the MBTA can authorize take wherever it is consistent with the treaties.

*Service response:* We read Congress's inclusion of the phrase ''or other interests in any particular locality'' as intended to ensure that other interests besides wildlife and agricultural claims would be able to seek remedy through a permit issued pursuant to regulations. In drafting the statute as it did, Congress gave the Secretary broad discretion to determine what types of other interests might be jeopardized by the broad protections afforded to eagles. When the statutory language was developed, the perception that eagles were a significant threat to livestock was widespread. Today, the American economy is comprised of numerous additional ''interests'' that have largely supplanted ranching in many areas of the country. These ''other interests'' provide jobs and support our infrastructure and quality of life, and by so doing merit similar protection as agriculture and livestock. Therefore these regulations provide a means to authorize eagle take to protect ''other'' interests such as transportation needs, electric utility maintenance, residential and commercial development, forestry, resource development and recovery, and other public and private interests.

*Comment:* In contrast to the restrictive process for authorizations for Native American religious use, the Service here proposes a sweeping process for allowing a broad spectrum of public and private interests to take eagles where their locations stand in the way of development and utility interests. The disparate treatment between these approaches must be reconciled.

*Service response:* The process by which we issue permits to Native Americans for take of eagles from the wild and permits for possession of eagle parts and feathers from the National Eagle Repository are the least restrictive means of doing so while protecting other compelling interests. Unlike under the permit regulations we are finalizing through this rulemaking, we do not require any mitigation or other conservation measures to offset the impacts of Native American religious take permits.

Furthermore, the effect of issuing permits under this proposed regulation will not impinge on Native Americans' access to eagles for religious/ceremonial use. This regulation includes provisions to ensure that, if overall demand for authorizations to take eagles approaches what would be compatible with the preservation of the bald eagle or the golden eagle, requests related to Native American religious/ceremonial use will be authorized before other requests for take.

*Scope and Criteria of § 22.26*

*Comment:* The proposed rule states that a permit may be issued when several criteria are met including where ''the take cannot practicably be avoided.'' The use of a ''practicable avoidance'' standard is inconsistent with the Eagle Act because it elevates cost and overall project concerns over protecting bald eagles. The Eagle Act provides that take should be authorized only where it is *necessary* to protect a legitimate interest, not merely a facilitating factor. The applicant should have to affirmatively demonstrate that, in the absence of the permit, the legitimate interest cannot be met, and the applicant must not be allowed to define the goals in an overly narrow manner.

*Service response:* We agree with the commenter that the goal for which the take is necessary must not be defined too narrowly by the applicant. For example, if a municipality is installing a bike trail with the goal to create a trail with an unbroken view of the river, it may be more difficult to avoid disturbing eagles along the river, than were the goal less narrowly defined—for example, to create a bike path that loosely parallels the river. Where possible, interests should be defined broadly enough to allow plans to be reasonably modified if necessary to protect bald eagles or golden eagles.

We do not agree that the practicable avoidance standard elevates the interest of the project proponent over eagles because whether the impact can practicably be avoided is only one of the factors we will weigh before issuing a permit, and it is secondary to whether the take will be compatible with the preservation of the bald eagle or the golden eagle. Nevertheless, to address this concern, when we re-opened the comment period on the regulation in August 2008, we modified the proposed definition of ''practicable'' to incorporate the need to consider the feasibility of the action relative to the scope of the impact on eagles. The final definition of ''practicable'' reads: ''capable of being done after taking into consideration, relative to the magnitude of the impacts to eagles (1) the cost of remedy comparative with proponent resources; (2) existing technology; and (3) logistics in light of overall project purposes.''

*Comment:* The applicant should not have to show that the take cannot practicably be avoided or that he has minimized impacts to the extent practicable. The language is similar to that used under the Clean Water Act section 404 wetlands permit program, which raises the concern that the Service will require applicants to conduct a detailed alternatives analysis test, including consideration of project purpose and alternative project sites. The Service should identify the authority under the Eagle Act for requiring that impacts be minimized to the extent practicable.

*Service response:* The Eagle Act stipulates that permits may be issued where the take is *necessary* to protect ... other interests in any particular locality (italics added for emphasis). Some could argue that, to be *necessary*, a thing is absolutely required and cannot be omitted or avoided. We believe a less strict interpretation is reasonable and justified to ensure that human activity is not overly restricted, and so interpret ''necessary'' as something that cannot *practicably* be avoided. In short, we view the practicability standard as less burdensome than other reasonable interpretations of the statute's purpose and intent, and therefore appropriate to adopt for purposes of this rulemaking.

*Comment:* Take authorized by these permits should be limited to activities that benefit the public welfare.

*Service response:* The Eagle Act does not limit take to activities that benefit the public as opposed to private interests. The statute specifically provides that take can be authorized to protect agriculture, which in this case primarily meant privately-owned livestock.

*Comment:* The Service should model the regulation on the U.S. Army Corps of Engineers' requirements for avoidance, minimization, and mitigation of unavoidable impacts, and these should be clearly set forth in the regulation.

*Service response:* While it was not our goal to model this proposed rule on Corps' regulations, the Service's official mitigation policy as set forth in the U.S. Fish and Wildlife Service Manual (501 FW 2) and reflected in this rule, is based on a similar tiered approach to reducing the overall impact of activities, beginning with avoidance and minimization, and requiring compensatory mitigation for large-scale activities with greater impacts.

*Comment:* Permits for take that results in mortality should be issued only for human health and safety.

*Service response:* Our goal and responsibility under the Eagle Act is to

preserve bald eagles and golden eagles, which we interpret and define as consistent with the goal of stable or increasing breeding populations of both species, but not protecting each and every eagle. Take that results in a loss of productivity and take that results in mortality must be assessed primarily in terms of affects to the regional and local area populations. Depending on the age and breeding status of an individual eagle, some take that results in mortality will have less impact than some disturbance take. Therefore, we believe there is no rationale to enact a prohibition on take that results in mortality—versus take in the form of disturbance—for commercial purposes.

*Comment:* There is a big difference between lethal vs. non-lethal take in terms of the significance of the eagle as a sacred being for Native Americans. Native Americans will not support lethal take for commercial purposes.

*Service response:* First, see our preceding response. We will, however, when appropriate, undertake consultation with tribes that may be affected by the lethal take of an eagle on a case-by-case basis, and will consider the cultural and spiritual significance of eagles and how take that results in mortality could adversely affect tribal cultural values at that time.

*Comment:* Where take resulting in mortality is authorized for an industry or other non-tribal entity, tribal members should be given the opportunity to physically take the eagles.

*Service response:* If feasible and appropriate, we may encourage a tribe that applies to take eagles to take ones that would otherwise be taken under the regulations herein. However, as a generality, we think it will be difficult to meet the purposes of both permits with a single take. Tribes that qualify for a take permit must certify that the take itself is an integral aspect of the religious ceremony in order to justify why an eagle from another source will not meet the tribe's needs. In other words, presenting the tribe with an eagle carcass will not suffice. Most eagle mortalities authorized under the permit regulations at § 22.26 are ''non-controllable,'' that is, the timing and location of each take is not precisely known before it occurs. When discovered, the carcasses of eagles killed under these permits will be sent to the National Eagle Repository to meet the religious needs of tribal members where the take itself is not necessary to carry out the religious ceremony for which eagle parts and feathers are sought. This provision provides an equitable opportunity for members of all federally-recognized tribes to use feathers and parts from such eagles for religious purposes.

*Comment:* The consideration of secondary impacts must be in the regulations, not just the preamble.

*Service response:* We agree, and have added language addressing consideration of secondary impacts—now denoted as ''indirect effects''—to the regulations under § 22.26 at (e)(1), (e)(2) and (f)1, and under § 22.27 at (b)(7) and (e)(1).

*Comment:* Secondary impacts will sometimes affect eagles that are known to breed, feed, or shelter on tribal land, and the tribes should be consulted before a permit is issued that would affect such eagles.

*Service response:* Before issuing a permit under these regulations, the Service will consider whether proposed plans might affect tribal rights to trust resources. If the Service determines that such effects might occur, we will notify the affected tribe(s) and consult with them if requested.

*Comment:* The use of ''means test,'' requiring the Service to consider ''the cost of a remedy comparative with proponent resources'' in determining whether a measure is practicable, is arbitrary and will result in more stringent requirements for project proponents with more financial means, rather than basing measure purely on what is practical.

*Service response:* In fact, we do believe that more stringent measures are appropriate for project proponents with more financial means. The plainest meaning of ''practicable'' is ''capable of being done.'' Greater resources, financial and otherwise, enhance capability and increase options. For example, a large landowner will generally have more options when designing a project than a small landowner. Thus, a large land-holding company building on 500 acres should be able to site proposed buildings farther from a communal roost than would a private homeowner on a 2-acre lot. Similarly, if the potential remedies for avoiding the take entail more money as opposed to more land, a proposed, large commercial project that is likely to take eagles may be able to alter the project design in a manner that requires additional financial resources but avoids the take, and still make enough money to be profitable.

*Comment:* Concentration areas need more protection than is proposed. The Service should designate areas like the Chesapeake Bay as critical to the continued recovery and maintenance of bald eagles, and establish higher standards for permitting take in those areas.

*Service response:* The commenter's suggestion is beyond the Service's authority under the Eagle Act. However, to the degree that the Chesapeake Bay and other areas are critical to the preservation of bald eagles, take in those areas will be more highly scrutinized, since we must consider compatibility with the preservation of the eagle before issuing a take permit. Part of that assessment will be an analysis of cumulative impacts, which will help safeguard particular localities that are critical for bald eagles.

*Comment:* The same consideration of whether alternative habitat is available that is proposed to be used for nest take should also be a criterion for disturbance permits when the disturbance is associated with the permanent loss of a nest, foraging area, or roost site.

*Service response:* We agree with this comment and have added this consideration to § 22.26(e), *Evaluation of applications*.

*Prioritization Criteria*

*Comment:* There needs to be a system of prioritization. Otherwise, the demand will threaten to reverse population recovery.

*Service response:* Recognizing the possibility that demand could exceed what would be compatible with the preservation of the bald or golden eagle in certain regions, we established regional take thresholds and will not issue permits in excess of those limits. We agree with the commenter that a system of prioritization is needed in case demand runs up against the thresholds, particularly in light of other types of eagle take permits we issue. Therefore, in the event demand exceeds take thresholds, the regulations include issuance criteria to ensure eagle take permits are issued according to following prioritization order:

1. Safety emergencies (§ 22.23 and new §§ 22.26 and 22.27);

2. Native American religious use for rites and ceremonies that require eagles be taken from the wild (§ 22.22);

3. Renewal of programmatic permits (§§ 22.26 and 22.27, and possibly other sections);

4. Non-emergency activities necessary to ensure public health and safety (§ 22.23 and new §§ 22.26 and 22.27);

5. (For golden eagle nests only) resource development and recovery operations (§ 22.25);

6. Other interests (§§ 22.21, 22.22, 22.23, and new § 22.26).

*Comment:* The Service should give priority to projects that are in the public interest.

*Service response:* If demand exceeds take thresholds that would be compatible with the preservation of the bald eagle or the golden eagle, we will prioritize Native American religious and cultural use and activities that serve the public interest over those that would largely benefit private or commercial interests.

*Comment:* Will the criteria giving Native Americans preference for eagle take mean that they will get depredating golden eagles instead of falconers?

*Service response:* Yes; although this rulemaking is separate from the regulations governing take of depredating eagles, the same principals that underlie the prioritization criteria in this regulation would apply to take of depredating golden eagles. Thus, if both a tribe (for religious purposes) and falconer request possession of such an eagle, we will give priority to the tribe.

*Comment:* The provisions giving first priority to tribes should require them to take from areas with the highest thresholds (if location not dictated by their religion).

*Service response:* If demand is greater than take thresholds in a given region, and a tribe requesting take can practicably take an eagle in another region that has take thresholds that are higher than demand while meeting the religious needs of the tribe, we may require the tribe to take the eagle in that other region.

*Comment:* The prioritization criteria and allocation process could affect the ability of the U.S. Department of Agriculture's Wildlife Services' program to manage depredating golden eagles.

*Service response:* The prioritization criteria could affect Wildlife Services' management of depredating golden eagles in rare cases. Where feasible and in accordance with tribal religious needs, if requests for take exceed take thresholds, we will direct tribes to take depredating eagles that would otherwise be taken by Wildlife Services or falconers.

*Relationship to the National Bald Eagle Management Guidelines*

*Comment:* The rule is unclear as to whether a permit is required for take that results from activities conducted in accordance with the Guidelines and other best management plans. The final rule should explicitly state that compliance with the Guidelines amounts to a de facto permit, or at least creates a presumption of compliance with the Eagle Act. The new bald eagle management scheme in Florida clearly states that no permit will be required for activities that conform to the Guidelines. The Service should do the same.

*Service response:* The State of Florida's new bald eagle management scheme is based on Florida law and does not require a permit to take bald eagles. Our regulations are authorized by the Eagle Act, which specifically requires a permit to take bald eagles. Therefore, we cannot do as Florida has done, that is: promulgate regulations that authorize some take without a permit. We believe take is generally unlikely to occur when our Guidelines are used to conduct of activities near eagles. Therefore, most activities that clearly conform to the recommendations provided by the Guidelines would not necessitate a permit. However, adherence to the Guidelines is not always as straightforward as simply keeping the project footprint 330 or 660 feet from an eagle nest, based on a category of activities. The Guidelines are *guidance*, and do not dictate what effects will *actually* happen to eagles from any particular activity. Many activities entail a variety of impacts, sometimes to eagles in more than one location, sometimes as the result of subsequent, foreseeable effects. Accordingly, to avoid take of eagles, more than the immediate project footprint should be considered. Also, some activities will not fit neatly into the categories provided in the Guidelines, and sometimes special circumstances may be present that make take more or less likely to occur. Examples of such circumstances include unusually open topography, acoustic anomalies, scarcity of alternative resources in a particular vicinity, and so forth. In summary, ''adherence to the Guidelines,'' is not a simple formula that will uniformly predict whether take will occur.

*Comment:* The Service should consider ways to allow for minor exceptions to the Guidelines without requiring a permit.

*Service response:* See our response to the preceding comment. We do not prohibit or authorize exceptions to the Guidelines. All we can prohibit or authorize are certain impacts to eagles. Anyone may choose to ignore the Guidelines, and that choice requires no authorization from us. However, if an eagle is disturbed or otherwise taken without a permit, it will be a violation of the Eagle Act.

*Comment:* The Service should make permits available for activities that conform to the Guidelines. At the very least, the Service should issue ''No-take'' letters to give landowners written protection from take liability for activities consistent with the Guidelines.

*Service response:* Due to the limited staff and resources of our agency, we want to discourage applications for permits to cover take of eagles that is in fact unlikely to occur. We believe our conservation mission is better served by helping the public reduce the likelihood of take by providing permits in appropriate circumstances where take is likely (and cannot practicably be avoided). If, after an application is submitted, the Service determines that take is not likely to occur, we may issue the permit (if permit issuance criteria are met); however, if we do not consider take likely to occur, we will not subtract the authorized take from Regional take thresholds—unless follow-up monitoring reveals that it did actually occur.

*Comment:* The Service should use the various guidelines that have been developed for specific States or regions when evaluating take.

*Service response:* The guidelines developed by different States and regions largely predate the Federal regulatory definition of ''disturb.'' To the degree that ''disturb'' has been interpreted relatively consistently by the different State and Federal agencies that developed the various guidance, those documents were useful to us when we developed our National Bald Eagle Management Guidelines. Because the Guidelines are designed to prevent an impact (disturbance) that is a Federal prohibition, we believe that a single set of recommendations for avoiding a violation of that prohibition should be applied throughout the United States. This in no way precludes States from enforcing their own statutory and regulatory protections for eagles, and applying their own guidance for minimizing State-prohibited impacts to eagles.

*Mitigation*

*Comment:* The proposed rule was unclear as to whether mitigation will be required for every permit issued, and also as to the range and types of mitigation that will be used.

*Service response:* Mitigation includes: avoidance, minimization, rectification, reduction over time, and compensation for negative impacts. Under these regulations, all permittees are required to avoid and minimize the potential for take to the degree practicable, and for programmatic permits, to the point where take is unavoidable.

Depending on the scale of the take, and the particular circumstances, the Service may require rectification and/or

reduction over time from some permittees. Additional compensatory mitigation will usually be required only for (1) programmatic take, and other multiple take authorizations; (2) disturbance associated with the permanent loss of a breeding territory or important traditional communal roost site; or (3) as necessary to offset impacts to local area populations. The take thresholds associated with this permitting process will ensure that each authorized take, along with cumulative take, is compatible with the preservation of bald eagles and golden eagles. Permit issuance is based on our making a finding that the population can withstand the take that will be authorized without experiencing a decline. Therefore, compensatory mitigation for one-time, individual take permits will not typically be necessary for the preservation of eagles. For projects with long-term impacts and/or impacts of a greater magnitude, compensatory mitigation will generally be required to reasonably offset the magnitude of the impacts.

We are developing implementation guidance to ensure consistency in how these permits are administered. Mitigation will be addressed in more detail in that document, which will be made available for public notice and comment before being finalized. Some compensatory mitigation options we are considering at this point include: purchase and preservation of habitat or potential habitat; use of conservation easements to protect important eagle-use areas or potential nest sites; and contributions to a fund established to benefit eagles.

*Comment:* Requiring compensatory mitigation for every permit will create a disincentive for landowners who would seek a permit in lieu of following the Guidelines.

*Service response:* Permit issuance is predicated on the requirement that the take cannot practicably be avoided and that the applicant has proposed avoidance and minimization measures to the extent practicable. Under those circumstances, if the applicant can practicably avoid the take, he must. Requiring additional compensatory mitigation should have no effect on whether the applicant can follow the Guidelines.

*Comment:* The final rule itself (and not just the preamble) must be explicit that secondary, foreseeable impacts will be assessed for purposes of determining what mitigation will be required.

*Service response:* The rule provides that we must consider reasonably foreseeable secondary impacts when assessing the overall level of take. Also, we added language to the permit conditions at § 22.26(c)(1) that requires the Service to consider indirect effects for purposes of determining whether compensatory mitigation is appropriate.

*Comment:* Mitigation must be geared to preservation of the local/regional population.

*Service response:* Avoidance and minimization are inextricably tied to the local population. Generally, rectification and reduction over time also benefit the local population. Ideally, as provided in our Service Mitigation Policy, the benefits of compensatory mitigation would accrue to the area where the take will occur and second priority would be in proximity to that area. However, if compensatory mitigation within or in proximity to the planning area is not practicable or a significantly larger benefit could be realized in another locality or region, the permit may include mitigation measures that benefit eagles in a different locality.

*Comment:* Any funding from mitigation should be used to protect eagle habitat.

*Service response:* We agree that protecting eagle habitat should be a high priority. However, there may be other beneficial uses for mitigation funds—for example to support surveys and population monitoring.

*Comment:* The Service must affirmatively describe the required minimization measures within the terms and conditions of the permit. As written, the rule allows the applicant to propose his or her own measures.

*Service response:* The project proponent must provide as part of his or her application a description of the measures to which he or she is prepared to commit. Without that information, we cannot evaluate the overall impact of the project. If the proposed measures are not adequate, we will not issue the permit as proposed. The regulations preclude us from issuing a permit if the applicant has not proposed measures to minimize impacts to the degree practicable. In such a case, we will work with the applicant to develop stronger minimization measures or we must deny the permit. In reality, we will often work with the applicant during the application process, so the terms and conditions proposed by the applicant have already been evaluated by us when we receive the completed application. The final terms and conditions will be explicitly spelled out on the permit.

*Comment:* Mitigation funding should be required and should go to States to compensate for their monitoring costs.

*Service response:* As explained above, we will not always require compensatory mitigation for take that we think is likely to amount to a one-time loss of productivity. Also, compensatory mitigation may not be in the form of payment. For example, it might be fulfilled by donation of an easement. If compensatory mitigation is required in the form of payment to a fund established to offset the impacts of take, the disposition of those funds will depend on various factors, such as whether the funds could be used to benefit local eagle populations and whether the Service has entered into agreements with the State or tribe to apply such funding. If States or tribes conduct surveys and monitoring of bald or golden eagles, mitigation funds could be directed to help offset the costs.

*Comment:* The rule should allow compensatory mitigation only in extraordinary circumstances.

*Service response:* We interpret this comment to mean that the Service should always require avoidance and minimization, and not allow compensatory mitigation to take the place of such measures. We agree, and the regulations require that applicants for both types of permits must take all practicable steps to avoid and minimize take. If this condition is not met, the regulations do not allow us to issue a permit.

*Comment:* The Service needs to clarify which Service program office (Ecological Services or the Migratory Bird Program), will be responsible for determining impacts and how much take will occur. It is important that the Service adopt a consistent methodology across regions.

*Service response:* Evaluation of impacts will be consistent across Service Regions and between Service programs, which will all be using national implementation guidance (to be developed) addressing this and other aspects of permit issuance.

*Comment:* Compensatory mitigation should not exceed the level of measurable impacts.

*Service response:* We agree with this comment, but note that compensatory mitigation will rarely precisely counteract impacts to eagles. In reality, for the largest impacts, compensatory mitigation is more likely to fall short of, rather than exceed impacts, since it is difficult to replace the loss of territory or communal roost site with creation of new ones.

*Comment:* If an applicant conducts avoidance and minimization to the point where take will likely be avoided, he will probably want a permit to justify his efforts, resulting in a bigger workload than the Service appears to be anticipating.

*Service response:* We now anticipate a larger workload than when we proposed the June 2007 rule, partially because of the demand from project proponents who re-design projects to avoid take. First, the process of providing them with the technical assistance needed to avoid the take may require significant staff resources from our Ecological Services biologists, and second because our Migratory Bird Permit Offices will still need to consider every permit application we receive and either deny or issue a permit. For this reason, we discourage permit applications from people who are not likely to take eagles. However, issuing permits to some of these applicants will provide a benefit: the permittees will be required to monitor the activity site and report how eagles react to the activity, providing us with valuable information on whether take that we believe is unlikely to occur does not in fact occur.

*Comment:* Will compensatory mitigation be required for removal of nests that are of low biological value?

*Service response:* We are unlikely to require compensatory mitigation for removal of nests that have very low biological value.

*Permit Conditions*

*Comment:* The public should be given the opportunity to comment on each permit after public notice.

*Service response:* While bald eagles were listed under the ESA, the public was provided an opportunity to comment before the Service issued each section 10 incidental take permit that authorized take of eagles. That process is a statutory requirement of the ESA (16 U.S.C. 1539(a)(2)(B)). The Eagle Act has no such requirement. While that does not preclude us from creating such a requirement under these regulations, we do not believe a public-comment period for each permit would provide an additional benefit to eagles that would justify the regulatory burden on the public and on our limited staff and resources.

*Comment:* The permit must be specific as to how much take is authorized and how it will occur. Otherwise, the permit may inadvertently grant indemnity for all take, whether anticipated or not.

*Service response:* Most permits will be specific as to how much take is authorized and how and roughly when it will occur. The exception will be programmatic permits, which will authorize take for large-scale and or long-term activities where take is anticipated but the exact amount, location, and timeframes are impossible to identify. Rather than ''grant indemnity for all take,'' programmatic permits will authorize only the take that occurs despite implementation of stringent ACPs designed to reduce take to the point where it is essentially unavoidable (yet anticipated). The overall effect of these types of permits will be a reduction in mortalities and other adverse impacts to eagles.

*Comment:* Permits should not specify exact numbers of authorized take. Rather, levels of take should be identified regionally.

*Service response:* Levels of take will be identified regionally in order to establish population thresholds up to which take can be authorized. However, each permit (except programmatic permits designed to reduce ongoing take) will authorize a specific amount of take to ensure that the cumulative take authorized under all the permits in a region does not exceed the regional population threshold.

*Comment:* The time period for a permit should be identified. Permits should not exceed one year.

*Service Response:* Each permit will have a limited tenure specified on the face of the permit. These final regulations limit the tenure for all permits to five years or less. Many projects are multi-year projects, and a 1–year tenure would introduce unnecessary uncertainty for a project proponent that cannot identify exactly when the take will occur. Receiving applications for the same take in consecutive years would also create more work for our permit offices without providing any benefit to eagles. That said, the rule limits permit tenure to five years or less because factors may change over a longer period of time such that a take authorized much earlier would later be incompatible with the preservation of the bald eagle or the golden eagle. Accordingly, we believe that five years is a long enough period within which a project proponent can identify when the proposed activity will result in take.

*Comment:* The rule should provide for inspections at any hour with no notice from the Service.

*Service Response:* The rule provides that the Service, or a designated agent, may inspect the area ''where eagles are likely to be affected, at any reasonable hour, and with reasonable notice from the Service, for purposes of monitoring eagles at the site(s).'' The purpose of the inspection is to determine whether eagles are using the site, not to surprise and scrutinize the permittee's activities.

*Comment:* The final rule should contain provisions for review, denial, modification, and revocation. Of particular concern is the potential situation where populations decline unexpectedly, or new information reveals the take would not be compatible with the preservation of the bald or golden eagle.

*Service response:* Provisions for review, denial, modification, and revocation, and other general processes and procedures that apply to all the types of permits the Service issues are found in 50 CFR part 13. For that reason, we do not reiterate those provisions within each section of regulations that govern individual permit types. Regarding the scenario raised by this commenter, 50 CFR 13.28(a)(5) provides that a permit may be revoked if ''the populations of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.''

*Comment:* The rule should address unanticipated take by specifying that the permittee must contact the Service immediately and apply for a new permit.

*Service response:* We have added language to the rule requiring the permittee to contact the Service if unanticipated take occurs. As to whether a new permit would be required, that will depend on the circumstances. Some situations may be more appropriately addressed by amending the existing permit or taking some other action.

*Monitoring*

*Comment:* Monitoring should not be required of the permittee. It is the responsibility of the Service. A three-year monitoring period is overly burdensome and would not result in useful information. Public reporting is not accurate or timely. The Service should develop a research project to monitor eagles to obtain accurate information.

*Service response:* The monitoring that will be required of the permittee is relatively minimal yet will serve several important purposes. The monitoring simply entails observing periodically, during the season(s) when eagles would normally be present, the area where the take is likely to occur and noting whether eagles continue to nest, roost, or forage there. Even this minimal monitoring will be important, however, because it will provide the Service with the best information available as to how human activities impact eagles. If we find that take does not occur as frequently as we anticipated, we can adjust the recommendations we provide in management guidelines and technical assistance. Also, if demand for take is

high enough to approach take thresholds, ascertaining that it did not occur under some permits could enable us to issue other permits where we otherwise would not. We know that reporting will not always be accurate, but even so, it is our best available option for garnering this data, since we do not have the staff and resources to monitor every site ourselves.

*Comment:* The Service needs to provide methodology for monitoring. The Service should be more specific as to what information is required by ''information on eagle use of important eagle-use areas potentially affected.''

*Service Response:* The monitoring requirements are relatively simple and require little in the way of methodology. The annual report form requires the permittee to submit the dates, times and numbers of eagle sightings at the important use areas where eagles are likely to be affected. Also, the report requires monitoring the site(s) periodically during the season that eagles normally breed, feed, or shelter in the area, at a time of day when eagles are most likely to be in the vicinity, if applicable (e.g., for communal roosts in the evening; for foraging areas, in the morning or afternoon).

*Comment:* The rule should require that monitoring be conducted by professional raptor biologists. Permittees will not be able to ascertain whether eagles adopt alternative nest sites or how the permitted activity may have affected the dynamics of a communal roost or feeding area.

*Service response:* We agree that more extensive monitoring would be very useful for purposes of understanding how eagles are affected by human activities. However, we expect that many permittees will not have the resources to hire professional biologists to perform that service. Our agency also does not have the resources to monitor all project sites. Therefore, the rule requires very minimal monitoring that the average person can easily perform. However, the rule also provides that the permittee must allow the Service or a designated representative to visit the area for purposes of monitoring eagle use. During those visits, we should be able to collect more extensive information regarding the dynamics of eagle behavior at the site. Although we do not have the capacity to carry out that function at the majority of permit sites, we can use the data we collect from the limited site visits to extrapolate eagle responses to permitted actions over a larger geographic scale.

*Comment:* The post-delisting monitoring plan should be adequate for purposes of monitoring bald eagles.

*Service response:* The PDMP is a national-level plan designed for an entirely different purpose than the monitoring that would be required under this permit regulation. The purpose of the PDMP is to detect declines in bald eagle populations that could trigger relisting. The purpose of the permittee's monitoring requirements in this rule is to ascertain whether permitted take actually occurs.

*Comment:* Is a permittee (such as an electric utility) only required to implement post-activity monitoring for three years after the initial construction of the site or for ongoing unavoidable take? Will its monitoring plan need Service approval, and will the results need to be furnished to the Service?

*Service response:* Monitoring is related to the activity that is likely to take eagles. If a project is likely to take eagles during an initial construction phase, but take is unlikely to occur during the subsequent, ongoing use of the facility, then monitoring may be required for up to three years after the construction is completed. If the ongoing activity is likely to take eagles, then the monitoring may be required for up to three years after cessation of the activity. For programmatic permits, the permitted industry may develop, in coordination with the Service, a specific, more extensive monitoring protocol, adherence to which would be a condition of the permit. Otherwise, as discussed above, monitoring for most permits is relatively straightforward and will not require any plan that needs approval from the Service. Monitoring results will need to be reported on an annual basis to the Service, for as long as monitoring is required.

*Comment:* Monitoring and report data should be provided to the State, particularly when activities could affect nesting results during State surveys.

*Service response:* We will make monitoring and report data available to States and tribes whenever requested (to the degree allowable by laws such as the Privacy Act). As with other data we collect, as well as data collected by the States and tribes, we support the sharing of information that pertains to joint interests between our governments.

*Comment:* The proposal's reliance on permittee self-monitoring is misplaced and threatens the long-term preservation of eagles. A detailed plan for achieving compliance, consistency, and confidentiality is needed. The rule should require monitoring to be conducted by a disaffected third party approved by the Service. Permittees should pay into a fund for experienced, independent organizations to provide or verify data.

*Service response:* We may include a requirement that monitoring be conducted by a third party as a permit condition for some larger projects and programmatic permits. However, although it might sometimes improve accuracy, we do not think it would be reasonable to require all permittees to enlist a third party to conduct the required monitoring. Also, we are not confident that enough disaffected third-party entities would be available to permittees in every location. We believe most permittees will try to provide accurate information. To increase the chances of that, we added language to the annual report form emphasizing that (1) filing an accurate report is a condition of the permit and (2) reporting the absence of eagles from the monitoring site will not, by itself, affect the continued validity of the permit.

*Application and Issuance Process*

*Comment:* The proposed rule requires the permit applicant to provide a certification that the proposed activity is in compliance with local, State, and Federal laws. What is meant by ''certification''? Who is responsible for this evaluation?

*Service response:* We meant that the application form would require the applicant to sign a statement that the proposed activity is in compliance with other applicable laws. However, we have revised the draft application form. It no longer requires that certification, but instead asks the applicant to state whether he or she has obtained the State or tribal authorizations necessary to conduct the activity. All of our migratory bird and eagle-related permits contain the standard condition that the Federal authorization is not valid unless the activity complies with all other applicable laws, including State and local laws. Permits issued under this regulation will include that condition and clarify that the activity must also be in accordance with any applicable tribal laws.

*Comment:* Can a landowner apply for a permit for multiple takes in an entire area of ownership that is not contiguous?

*Service response:* A landowner can apply for as many takes as he or she wants in different locations. However, each take we authorize will have to meet the permit-issuance criteria (e.g., it must be compatible with the preservation of the eagle, cannot be practicably avoided, etc.). Depending on the particular circumstances and in order to ensure that issuance criteria are met, we may authorize only a portion of the requested take (or all or none).

*Comment:* The Service should be required to coordinate with State wildlife agencies when issuing permits. The Service should work with the States to develop implementation guidance to avoid incompatibilities.

*Service response:* We intend to work with States to establish protocols for coordination between the Service and States during the permit process.

*Comment:* The rule should contain timelines for how long the Service can take to issue permits. Projects are often subject to very specific construction and financing constraints.

*Service response:* Timelines for permit issuance do not belong in a regulation, but rather in internal implementation guidance. We plan to include target processing times in the implementation guidance associated with this permit program.

*Comment:* The Service should establish the expectation for and a process of pre-application consultation to direct potential applicants, establish the need for a permit, and protect the eagle resource. It is essential that the Service make technical assistance readily available to advise project proponents regarding how to avoid impacts and to help in preparation of permit applications. However, it appears that neither the Service nor the States have the resources for technical assistance and consultation with applicants. Who will be providing this service (and how) needs to be addressed.

*Service response:* We agree that technical assistance is a vital customer service. It enables us to provide our best advice as to whether take will occur and how to avoid or minimize any take, and at the same time reduces uncertainty for the public. It will also reduce unnecessary permitting workload and better protect eagles. For these reasons, we are committed to providing technical assistance early in the process to the extent our limited staffing and resources will allow.

*Comment:* The requirement that the applicant be responsible for field surveys and providing data on the location of nests and important-use areas is overly onerous and would make it difficult to apply for a permit.

*Service response:* We removed this language from the regulation because many projects will not require field surveys and we felt that language might intimidate people whose activities were relatively straightforward. Nevertheless, it is the applicant's responsibility to provide us with a complete application before we can process it. We will assist those in need to the degree our staffing and resources allow.

*Comment:* Provisions should be added for expedited permit issuance for emergency situations. Under the ESA, there are provisions for emergency take that the Service should adopt for eagles, wherein the take can be documented through emergency consultation done after the emergency response has been completed.

*Service response:* The Eagle Act does not allow the Service to authorize bald eagle take without issuing a permit (16 U.S.C. 668a). We will make every effort to expedite issuance of a permit in situations where take is unavoidable due to an emergency. If circumstances are such that a permit cannot be issued prior to the take in cases of genuine emergencies despite the best efforts of the parties involved, we are unlikely to refer such take for prosecution under the MBTA or the Eagle Act. Procedures for addressing emergency take will be addressed in implementation guidance.

*Comment:* Any eagle take permit must be reviewed under section 106 of the National Historic Preservation Act (NHPA) because any such take has the potential to affect historic properties and culturally significant sites. Eagle nests and other sites where eagles are present may be considered culturally significant to Native Americans as well as other American citizens, requiring the Service to conduct a cultural-resource assessment prior to issuing these permits.

*Service response:* We appreciate this comment, and will comply with Section 106 on a case-by-case basis when issuing permits that have the potential to result in effects on historic properties. We also plan to consult with appropriate stakeholders, including tribes, to develop State or regional agreement to govern how the Service will comply with the NHPA when issuing permits to take eagles in specific States or regions.

*Comment:* Even if not on tribal land, eagles, eagle nests, and other sites have cultural significance to many Native American tribes and tribal members. For that reason, tribes should be consulted before any eagle take permit is issued.

*Service response:* Before issuing a permit, we will consult with federally-recognized tribes if issuance of the permit may adversely affect their traditional tribal activities, practices, or beliefs; or if issuance of the permit may adversely affect the tribe's ability to regulate, protect, provide services to, or otherwise govern their tribal membership, lands and resources. We plan to work with tribes to develop guidance for us to use when processing permits to manage and resolve tribal concerns.

*Comment:* The proposal implies that permits will never be denied because the number of anticipated applications (300) is the same as the number of permits the Service anticipates issuing (300) (see discussion under *Regulatory Planning and Review at 72 FR 31148).* Will the Service not deny any permit applications?

*Service response:* Our intent is to use technical assistance at the Field Office level to minimize potential take from proposed activities. Service Field Office biologists will assist project proponents by assessing whether take is likely to occur and how it can be avoided or minimized. The Field Office should also inform applicants if permits will not be available to them because they do not meet the issuance criteria or because take thresholds for the species preclude further issuance of permits. If this process works successfully, most people who actually submit applications for permits will qualify for a permit. Thus, the pre-application process will reduce take and the need for permits, and serve as a filter through which qualifying applicants will pass before submitting a completed application. For that reason, we anticipate issuing permits for the majority of the complete applications we receive.

We have increased our estimates of permit applications received and permits issued to 1,168 applications received and 910 permits issued, annually, under both new permit regulations.

*Comment:* The Service should consider ways to allow its Ecological Services Field Office staff to handle bald eagle and golden eagle permitting on behalf of the Migratory Birds Division. Field Office biologists have experience and established relationships with project proponents such as State departments of transportation. Also, having to work with multiple offices will place a burden on applicants. Permitting should be done in conjunction with any ESA consultation that needs to be done as part of the proposed project.

*Service response:* We agree that technical assistance should be streamlined where feasible to address the requirements necessary to comply with more than one regulatory program. In accordance with Service Mitigation Policy (501 FW 2), we will provide assistance to project proponents in crafting conservation measures early in the planning phases of projects so that all conservation mandates are integrated into the project rather than introduced later in the planning process. In many cases, other trust resources such as wetlands or endangered and threatened

species may be affected in addition to eagles. Many requests for eagle-take authorization will be associated with projects that have a Federal nexus, including energy, transportation, water, and restoration projects, and thus could be assessed in conjunction with the section 7 consultation process. The Service's Ecological Services Field Office staff provide conservation planning assistance that uses a streamlined approach to incorporate the requirements of multiple environmental reviews into a single integrated process.

For example, as provided in our Habitat Conservation Planning Handbook, we recommend ''integration of the National Environmental Policy Act (NEPA) analysis with the other planning and environmental review requirements'' so that ''all procedures run concurrently rather than consecutively.'' Thus, for projects that involve other planning and review requirements in addition to under the Eagle Act, the Field Offices would integrate the assessment of the impacts of the eagle take authorization into the NEPA process.

After projects are designed with the technical assistance provided by our Field Offices, the project proponent will submit his or her completed application to the Regional Migratory Bird Permit Office for processing.

*Comment:* Permits should be expedited for recipients of technical assistance letters. Recipients of technical assistance letters that authorized activities inconsistent with the National Bald Eagle Management Guidelines may be subject to Eagle Act prosecution.

*Service response:* Technical assistance letters did not provide any authorization to take eagles. The only means available to gain authorization to take eagles under the ESA was by means of the permit issued under section 10 or an incidental take statement issued under section 7. The role of technical assistance letters was to inform the landowner or project proponent that the Service did not consider take likely to occur. Generally we issued these letters after providing technical assistance to the project proponent that included recommended modifications to the planned activity to minimize the possibility of take, and after the project proponent agreed to incorporate the measures. Technical assistance letters do not authorize take should it occur despite the recommended measures; only a permit or incidental take statement could absolve a person of liability for take of eagles. In situations where these letters were issued and the activity proceeds, there is no Eagle Act violation unless an eagle is disturbed or otherwise taken, regardless of whether the activity was consistent with the National Bald Eagle Management Guidelines.

If take does occur, the Service is unlikely to prioritize enforcement actions against a party that followed the Service's written advice (in the form of the technical assistance letter) as to what steps were necessary to avoid taking eagles. Furthermore, although take of bald eagles under the Eagle Act can be authorized only by permit, it is not our goal to encourage applications for permits to cover take of eagles that is in fact very unlikely to occur. We believe our conservation mission is better served by helping the public reduce the likelihood of take, and to provide permits in appropriate circumstances where take is likely (and cannot practicably be avoided).

*Comment:* The approval process should give ''substantial weight'' to findings of consistency with a State management plan where such plans are consistent with the Eagle Act's goal of preservation of the eagle (examples: FL and MD Chesapeake Bay Critical Area Program).

*Service response:* We encourage consistency with State management plans. However, the need for Eagle Act authorization is not based on State land-use planning or habitat protection. Though we recognize the vital importance of those tools in protecting eagles, the Eagle Act directly protects eagles, eggs, and nests, rather than habitat. State management plans such as the ones cited by the commenter are designed to help guide development away from areas that may be more important to eagles or other wildlife or natural resources. To the degree that a take that is consistent with a State management plan may be more compatible with the preservation of the bald eagle or the golden eagle, we are more likely to authorize it. However, we will evaluate it under the statutory mandate of the Eagle Act rather than a State management plan. At the same time, we plan to establish protocols for coordination with States and tribes during the permit review process. Some will desire a greater degree of coordination than others, but we will involve the States and tribes in developing processes for coordination between agencies.

*Comment:* The Service needs to address how it will ensure compliance with State regulations, particularly in light of the need to protect local populations. Because most States do not have a regulatory process to address much of this take, the Service should clearly state that its Regional Offices will coordinate closely with and receive approval (if requested) from any State where take would be authorized. Also, States need to be kept apprised of the level of take currently authorized in each management population. A nationwide database accessible to the States or regular (e.g., bi-weekly) reports to the States may be needed.

*Service response:* As discussed above, we will coordinate with States and tribes as appropriate. The level of coordination may differ from State to State (and tribe) depending to some degree on how closely each wants to be involved. However, we do not currently envision seeking approval from the State or tribe for each permit we issue. The permit is a Federal authorization for an impact to eagles that would otherwise be prohibited under Federal law. If the State or tribal law also prohibits the action, the Federal permit does not insulate the permittee from liability under such State and tribal laws. In addition to our direct communications with States and tribes, we will try to ensure that permit applicants understand the need to comply with State and tribal laws and regulations.

We like the idea of a database we could make available to States and tribes, and may pursue that option if we have the resources to do so. Biweekly reports are probably not a realistic option due to limited staffing and busy schedules, but are not out of the question. At a minimum, we anticipate working with the Flyway Nongame Technical Committees to keep them apprised of applications that are likely to be of high interest, as well as pending and issued permits in their States. We hope to establish a process comparable to the Flyway structure, but comprised of representatives from tribal wildlife agencies to allow us to share information with tribes in a coordinated manner.

*Comment:* To ensure that State programs for eagle management are considered before permits are issued, the Service should develop a comprehensive compilation of State regulations for both species, including how take is defined and regulated in each State, and it should be published in the final EA.

*Service response:* We agree that a compilation of State and tribal regulations could be useful and have included a simplified version of such in Appendix B of the FEA. However, to do full justice to the complexity and nuances of the different approaches taken by States and tribes in protecting eagles would require considerably more

time, effort and resources than we have been able to supply for such an effort at this time. There is enormous variation in how States and tribes manage eagles. Some have no regulations that pertain to eagles specifically, some are habitat management plans, some are permit programs, but the prohibitions are not the same as Federal prohibitions, while others have similar or even stricter prohibitions but completely different issuance criteria for permitting. This high degree of variability may be difficult to capture in a single, user-friendly compilation. More effective, at least for the short term, will be for each Service Regional Migratory Bird Office to familiarize themselves with the laws and regulations of States and tribes within their respective regions that apply to eagle management. We already operate in this manner when issuing other types of permits. For example, we will not issue a permit to possess a red-tailed hawk in Hawaii, because Hawaii regulations do not allow raptors within the State.

*Comment:* The government should give the tribes notice of all pending and future applications for permits, particularly where eagles may be affected on or near tribal lands.

*Service response:* As with States, some tribes will want closer coordination with us than others. We plan to work with each tribe that is interested to establish implementation protocols regarding the level of coordination desired by the tribe.

*Comment:* The regulation needs to include stronger, more explicit language regarding the need to be compliant with tribal law.

*Service response:* The requirement to be in compliance with other laws and regulations is a standard condition of all Service Migratory Bird permits and it is spelled out on the face of each permit. However, to ensure this condition is given sufficient weight, we have added the following new regulatory language to the permit conditions in both § 22.26 and § 22.27: ''The authorization granted by permits issued under this section is not valid unless you are in compliance with all applicable Federal, tribal, State, and local laws and regulations applicable to take of eagles.''

*Comment:* The Service should issue programmatic permits to the Corps, other Federal agencies, and State agencies, allowing them to provide take authority subject to their own programs where they are consistent with the Eagle Act's requirements.

*Service response:* Our ability to delegate permit authority to outside agencies is limited because the Eagle Act does not allow take of bald eagles unless a permit is procured from the Secretary of the Interior. However, within our statutory authority and to the degree that is compatible with the preservation of eagles, we intend to explore ways of streamlining the permit-issuance process, which might include issuing a ''Master permit'' to other agencies, allowing them to allocate take authorization where needed. One of many complicating factors is that requests for permits may exceed what would be compatible with eagle preservation in some areas, in which case the issuance criteria governing prioritization to certain interests (safety emergencies, Native American religious needs, and so forth) will come into play. If permits are ''re-distributed'' by a third party, the coordination needed to ensure the prioritization issuance criteria are met could be rather challenging.

*Programmatic Permits*

*Comment:* The June 2007 proposed rule suggested that permits for lethal take would only be available if the take was unavoidable and best management practices (BMPs) are being implemented. The proposed definition of ''unavoidable'' is flawed because it relies on industry-accepted measures for avoiding take, but in most circumstances, industry-accepted measures will not be all that can be done to avoid take. Are the BMPs limited to those developed specifically for the purpose of reducing eagle mortality? What would happen if different BMPs proscribe conflicting actions? Clarification is needed as to what constitutes lethal take; disturbance can sometimes result in eagle mortalities.

*Service response:* Our reference to BMPs caused understandable confusion because it was interpreted to mean any type of industry-accepted BMPs for the conduct of the activity, regardless of whether the BMPs were designed to reduce eagle mortalities or serve some entirely unrelated function (such as human safety and hygiene). Our intent was that the BMPs would have to be designed to reduce eagle mortalities and other take of eagles. We have revised this part of the rule. Rather than referencing BMPs, we are clarifying that we will work with industries to develop what we are calling ''Advanced Conservation Practices'' (ACPs), designed specifically to reduce take of eagles (and sometimes other migratory birds). Implementation of ACPs will qualify some entities for programmatic take permits, and can be used to authorize ongoing unavoidable disturbance as well as unavoidable mortalities. The ACPs will be developed by the applicant in coordination with the Service and will be scientifically-supportable measures representing the best-available techniques designed to reduce disturbance and ongoing mortalities to a level where remaining take is unavoidable.

*Comment:* Will lethal take permits be issued for industries that have no such measures?

*Service response:* These regulations allow us to authorize take that results in mortality as long as the issuance criteria for a standard permit under this section are met, but would not allow us to issue a permit for programmatic take without development and implementation of ACPs.

*Comment:* Programmatic permits will increase mortalities by giving the perpetrators a ''free pass.''

*Service response:* The design and intent of programmatic permits is exactly the opposite of what the commenter suggests. Programmatic permits will be issued and valid only where the applicant/permittee implements rigorous conservation measures to reduce take to the point where it is unavoidable.

*Comment:* The regulation should be clear that development of programmatic permits will entail coordination with States where the activity will occur.

*Service response:* We envision close coordination with States and tribes when developing programmatic permits. We will address such in forthcoming implementation guidance, which we intend to develop in coordination with States and tribes, as well as the general public, via a public comment period.

*Comment:* The Service should codify programmatic permit conditions through the **Federal Register** process.

*Service response:* Programmatic permits are designed to reduce mortalities and other take. In our view, a public comment period for each programmatic permit would not provide an additional benefit to eagles sufficient to justify the delay, regulatory burden, and the substantial additional resources from our agency needed to navigate the **Federal Register** process.

*Comment:* Programmatic permits are not acceptable unless the Service retains the authority to decide what constitutes advanced conservation practices, required mitigation, and how much take is unavoidable.

*Service response:* Although we will develop ACPs in coordination with applicant industries and other entities, the Service will make the final decision as to what measures constitute the ACPs that will serve as required conditions of programmatic permits.

*Comment:* Current best management practices such as those developed by the Avian Power Line Interaction Committee (APLIC) should be the baseline, and more should not be required to get a permit.

*Service response:* The voluntary recommendations for avoiding avian mortality developed by APLIC are much more comprehensive than any we are aware of for other industries. However, most utilities that have adopted them have done so in a relatively piecemeal manner, using some recommendations in some areas, applying others in different places, and very rarely implementing all the measures that could be used to reduce eagle mortalities. Furthermore, there are practices over and above what APLIC recommends that could further reduce take in some situations. Programmatic permits are premised on the permittee implementing all achievable measures to reduce take to the point where it is unavoidable.

*Comment:* Programmatic permits must include provisions to safeguard local populations (geographic limits) and mechanisms to restrict permits when and where populations decline. Programmatic permits should contain provisions subjecting them to revocation if eagle take resulting from the activity is greater than anticipated.

*Service response:* We have added the following language to both permit regulations: ''The Service may amend, suspend, or revoke programmatic permits if new information indicates that revised conditions, suspension, or revocation is necessary to safeguard local or regional eagle populations.''

*Comment:* Programmatic permits should be issued for multi-year periods to provide certainty.

*Service response:* Most programmatic permits will be issued for the full five years that a permit can be valid under these regulations. Furthermore, renewal of programmatic permits will have priority over other permits for eagle take except to address safety emergencies and meet the religious needs of tribes.

*Comment:* There should be no time limit for programmatic permits because they are based on the premise that there is nothing more the permittee can do to minimize take.

*Service response:* We expect that circumstances will often change such that the original ACPs may no longer be considered the most effective measures that could be adopted. There are likely to be technological advances in some industries that would warrant adoption of new, more effective conservation measures. Also, new information regarding eagle biology, behavior, and responses to the permitted activity may warrant re-examination of the effects of the permitted activity and re-evaluation of the permit conditions.

*Comment:* Programmatic permittees should not be subject to enhanced monitoring and reporting requirements; so long as the ACPs are being carried out, no further information should be necessary for the Service to know as far as population impacts are concerned.

*Service response:* See our response to the comment above. Also, the monitoring we will require for programmatic permits will not be large-scale population monitoring (such as the bald eagle post-delisting monitoring plan). Rather, the monitoring required of programmatic permittees will be focused on assessing how effective the ACPs actually are, how much take is actually occurring, and overall eagle presence and use of the project area. This type of information will be critical for evaluating the impact of the permit program on eagles, as well as for crafting future guidance for minimizing human impacts outside the permitting program as necessary to maintain healthy eagle populations.

*Comment:* The final rule must provide for the situation where there are no practicable ACPs that can mitigate ongoing, unavoidable take.

*Service response:* There are probably very few situations where nothing can be done to reduce impacts to eagles. All sorts of factors will be in play, such as timing and siting of the activity; timing and siting of surrounding activities being conducted by different entities that can come to the table; technological advances; additional staff; and other factors. Creativity may be required in some cases to find effective, achievable measures. However, in the rare situation where all parties agree that nothing can be done to decrease the take from an activity that is a legitimate interest in a particular locality, compensatory mitigation can be used, and the measures required for compensatory mitigation would need to result in a reduction of take at a different location and/or from a separate activity. Those measures would be the ACPs for the permit.

*Comment:* The final EA and regulation should make clear that the permitted entity may implement measures that do not fully avoid or minimize take where doing so is not within the authority of the entity.

*Service response:* Generally, if measures to reduce take are outside the authority of the entity, then liability for the take rests elsewhere too. Usually, whoever has the authority to affect the level of take will be the entity responsible for the take. There will be some situations where one industry takes eagles in part because of the actions of another entity. Even then, however, the liability would usually be shared. An example would be a railroad company with trains that sometimes strike bald eagles that are attracted to an artificially baited site nearby. The person feeding the eagles may be in violation of the Eagle Act because of its prohibition on disturbance, since the feeding interferes with normal feeding behaviors and results in injury of eagles, which meets the definition. However, the railroad company is also in violation, since its trains are actually killing eagles. In a situation this straightforward, enforcing against the feeder would be appropriate, and would reduce eagle mortality to a point where the only remaining, effective measures to further reduce take would be the railroad company's responsibility. If one entity's actions are not themselves a violation but do contribute to a violation on the part of another entity, we envision that a dialogue would be necessary between the two actors to arrive at joint measure to reduce take. We may aid in the process of dialogue if we have the resources, but the responsibility to comply with the Eagle Act preceded the existence of this permit program, and remains with the actors regardless of the availability of these permits.

*Comment:* The process for developing industry metrics should be set forth in the rule.

*Service response:* At this time, we have not established a process for developing industry metrics. We plan to do so as part of crafting implementation guidance. There will be an opportunity for public notice and comment before any such process is formalized.

*Comment:* The final rule should make clear that industry standards can be developed over time as various entities from different locations (with different conditions) apply for permits, and it is not necessary for the entire industry to be regulated with a national standard.

*Service response:* Yes, our intent mirrors what the commenter suggests: we anticipate that ''an industry'' will often be a single large utility, or one major railroad line, or one transportation agency. Circumstances for that single entity may be quite different than for a comparable entity in another part of the U.S., warranting ACPs that might be ineffective or counterproductive if applied elsewhere. ''An industry'' could also be an association of participating smaller entities who will be permitted under the standards developed by the association.

We agree that industry standards will evolve over time. After several programmatic permits are in place for one type industry, we may, in developing ACPs for another entity within the same industry, arrive at superior measures that can be achieved. If appropriate, those can be applied to the earlier programmatic permits when those permittees apply for renewal.

*Comment:* Programmatic permits should not include an estimate of mortality because: (1) it is too difficult to estimate; (2) even if the ACPs are effective, increasing eagle populations can still result in increased mortality, and (3) by definition, the ongoing operations will improve mortality rates.

*Service response:* We think estimates of mortality are possible. The Eagle Act requires that we determine that take is compatible with eagle preservation prior to issuing a permit. Therefore, if data on effects of an activity on eagles are so spotty that no estimate is possible, a permit may not be appropriate. The only activities that will qualify for programmatic permits are those that have been studied fairly rigorously in order to develop comprehensive ACPs to reduce take to the maximum level achievable. This level of research should typically yield data sufficient to develop reasonable estimates of eagle mortality before and after implementation of the ACPs.

*Comment:* Programmatic permits should not be issued for unlimited take; otherwise there will be no incentive to pursue additional methods to minimize take.

*Service response:* Programmatic permits will all include estimates of take. To ensure that take does not continue to be authorized if it exceeds the estimate and is incompatible with the eagle preservation, we added a condition to each regulation that we can amend, suspend, or revoke a programmatic permit if ''new information indicates that revised conditions, suspension, or revocation is necessary to safeguard local or regional eagle populations'' (§ 22.26(c)(7) and § 22.27(b)(8)).

*Comment:* It should be possible to meet the requirement that an applicant demonstrate reduced mortality before getting the permit via scientifically-based predictions, rather than requiring field data; many operations will not have good historical baseline with which to compare data.

*Service response:* If an applicant for a programmatic permit cannot establish a historical baseline, we may use estimates of take based on predictions generated by sound scientific research. This applies to development of ACPs, as well. It may not be feasible for an industry to demonstrate the effectiveness of the ACPs or to fully implement them prior to obtaining the permit. We envision that in many cases, programmatic permits will be issued before all ACPs are completely implemented; however, the validity of the permit is conditioned on implementation of ACPs where the take occurs. In other words, if ACPs are phased into a project, any take that occurs outside of the area where the required ACPs have not been implemented, is not authorized by the permit.

*Comment:* Programmatically authorizing eagle mortalities under the Eagle Act is of limited value to the power industry because utilities will still be liable under the Migratory Bird Treaty Act for incidental take of other birds, since no permit is available for incidental take under the MBTA.

*Service response:* No permit is currently available to authorize incidental take under the MBTA. However, many of the ACPs that would minimize eagle take will also reduce other avian mortalities with the result that utilities that implement the ACPs under these Eagle Act regulations will minimize take of other migratory birds in addition to eagles, decreasing their liability under the MBTA. The Service focuses its enforcement resources on investigating and prosecuting individuals and companies that take migratory birds without regard for the consequences of their actions and the law, especially when available conservation measures have not been implemented.

*Comment:* It would be impossible to demonstrate that all avoidable eagle mortality has been eliminated. Recommended practices cannot completely eliminate the risk of mortality. Programmatic permits should not be based on a standard of ''unavoidable''; rather, they should be based on the practicability standard applied to individual permits.

*Service response:* We agree it would be impossible to demonstrate that all avoidable eagle mortality has been eliminated. What we expect instead is that the permittee fully implement the ACPs agreed to by the Service as conditions of the permit, which are measures designed to reduce take to the maximum degree achievable. The standard for programmatic permits is higher than the practicability standard applied to ''individual'' permits because programmatic permits authorize more take on a larger scale than individual permits. Where an individual permittee's required conservation measures will factor in the ''cost of remedy comparative with proponent resources,'' a programmatic take permit will be available only if the applicant can implement all available, technically-achievable measures to reduce take. We believe this higher standard is necessary to protect eagles from large-scale and cumulatively significant take.

*Comment:* Will the development of programmatic permits be subject to NEPA? A full environmental analysis must be done on a case-by-case basis for programmatic permits.

*Service response:* Programmatic permits will each be subject to NEPA.

*Comment:* The regulations should include the requirement that industry standards required for programmatic permits must specifically include facility-siting criteria.

*Service response:* The location of facilities often can have significant impacts to eagles (e.g., wind farms), and some industries may be able to reduce take substantially by selecting particular sites over others. However, for other industries or entities seeking programmatic permits, location of facilities may not be a primary factor in reducing eagle take, and for that reason we have not included language in the regulations to require facility siting criteria as conditions of the permit. However, we intend to ensure that siting criteria are emphasized in the implementation guidance that we will develop for programmatic permits and adopted where applicable.

*Definitions*

*Comment:* Adding ''destroy'' to the ''take'' definition enlarges the statutory definition of ''take,'' but the Service has no authority to do so. The Service should say what the intended effect is of adding ''destroy'' to the definition of ''take.''

*Service response:* We have the authority to define ''take'' in a way that includes more than just the specific examples Congress included in the statutory definition. The Eagle Act, expressly states ''take *includes also* pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.'' 16 U.S.C. 668c (emphasis added). If Congress had intended to restrict the definition to the terms included in the Act, it would have stated what take *means*, not what it *also includes*. The intended effect of adding ''destroy'' is to clarify the meaning of ''take'' in a way consistent with Congressional intent. Legislative history demonstrates that the Eagle Act was intended to protect nests from destruction, and we have previously

interpreted ''take'' to include ''destruction.'' However, as written, the statutory definition of ''take'' does not include any term that explicitly applies to nest destruction. Therefore, we are adding ''destroy'' to the regulatory definition to codify our long-standing informal interpretation and to ensure that the public has adequate notice of this interpretation.

*Comment:* By defining ''important eagle-use area,'' the Service has gone beyond its statutory authority. The definition ''appears to cast a wide regulatory net over areas that may be used by eagles'' by implying that eagle take permits will be required for activities within these areas. Also, who will determine what is ''essential'' to the viability of the eagle? What if the important eagle-use area is on someone else's property?

*Service response:* Defining a ''term of art'' is not the same as regulating it. Sometimes, as in this case, a definition can be used in order to refer to multiple objects by applying a single name to them as a group, eliminating the need to reiterate each component of the group whenever they are referenced.

In this case, because eagles can only be disturbed if their breeding, feeding, or sheltering behaviors are substantially interfered with, disturbance is likely to occur near important breeding, feeding, and roosting areas. Therefore, in assessing whether disturbance is likely to occur, it is logical to evaluate the relationship between the potentially disturbing activity and the important breeding, feeding, and sheltering areas. To more succinctly address this concept, we will use the term ''important eagle use-area'' to refer to one or more of the areas where eagles will potentially be disturbed by an activity. Naming this term in no way extends our regulatory reach over these areas, but rather provides a logical means to evaluate potential take. It does not matter on whose property the important eagle-use area is located; the important eagle-use area is not being regulated. What is regulated are certain impacts of an activity on eagles.

Finally, what is ''essential'' to the viability of the site for breeding, feeding, and sheltering eagles will depend on the various factors that affect the degree to which eagles depend on the site. Those best able to evaluate what is ''essential'' are likely to be State and Federal biologists or other eagle experts. Many important eagle-use areas are well-documented, and even where not specifically documented, bald eagles are relatively well-surveyed, and much is known about behaviors of eagles in particular localities.

*Comment:* Additionally, the terms within the phrase ''important eagle-use area'' need to be defined (e.g., ''foraging area,'' ''communal roost site''). ''Foraging area'' should be defined narrowly to mean only those areas used during migration and wintering periods at traditionally-used sites, perhaps as those ''containing traditionally-used concentrations of preferred prey.''

*Service response:* We agree that defining ''foraging area'' and ''communal roost site'' would be helpful and we have done so, as follows: ''foraging area'' means ''an area where eagles regularly feed during one or more seasons''; ''communal roost site'' means ''an area where eagles gather repeatedly in the course of a season and shelter overnight and sometimes during the day in the event of inclement weather.'' Not all foraging areas and communal roost sites are important enough such that interfering with eagles at the site will cause disturbance (resulting in injury or nest abandonment). Whether eagles rely on a particular foraging area or communal roost site to that degree will depend on a variety of circumstances—most obviously, the availability of alternate sites for feeding or sheltering.

*Comment:* ''Important eagle-use areas'' should include migration corridors.

*Service response*: We agree that take of eagles within migratory corridors is a significant concern with regard to certain activities, particularly wind-power facilities. However, we think the majority of applicants for individual permits will not be engaging in activities that are likely to take eagles in migration corridors, so have left them out of the definition of ''important eagle-use areas.''

*Comment:* ''Nest'' should be defined more narrowly than was proposed, to account for whether the structure was ever used, has been abandoned, or is occupied by great-horned owls, etc. The proposed definition is inconsistent with the five-year period specified in the Guidelines after which a nest can be considered abandoned for purposes of maintaining the buffers recommended in the Guidelines. The definition should limit nests to those that are maintained or used within twelve months.

*Service response:* The Guidelines do not define a nest as ''abandoned'' after five years. The Guidelines suggest that buffers may no longer be warranted after five years of disuse because the likelihood of disturbing eagles is decreased by that point. However, under the Guidelines, the term ''nest abandonment'' has no relation to that five-year period. The definition of ''nest abandonment'' in the Guidelines does not necessarily entail permanent rejection of the nest. In fact, the Guidelines specifically state that ''nest abandonment occurs when adult eagles desert or stop attending a nest and do not subsequently return and successfully raise young in that nest *for the duration of a breeding season*.'' NBEMG, p. 17 (emphasis added).

We based the definition of ''eagle nest'' on the existing regulatory definition of ''golden eagle nest'' (50 CFR 22.3), which has no expiration date. As we note in the Guidelines, the probability of disturbance occurring at a nest decreases the longer the nest goes unused. However, it would be arbitrary to state a time limit after which an eagle nest no longer meets the definition of a nest, given that suitable nest sites are limited in many areas of the country and are often re-occupied by eagles after many years of disuse. The definition provided by this rule is consistent with the long-standing definition of golden eagles nests and better satisfies the statute's intent to protect eagles by protecting nests: until the structure is no longer ''readily identifiable as a structure that is built, maintained, or used by eagles for purposes of reproduction,'' it is protected as a nest by the Eagle Act.

*Comment:* Clarification is requested as to whether the definition of ''nest'' includes alternate nests as well as the primary nest site.

*Service response:* To clarify that the definition includes alternate nests, we revised it by changing ''a'' to ''any.'' The definition now reads: ''any readily identifiable structure built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction.''

*Comment:* The rule should use the definition of ''eagle nest'' already in the Code of Federal Regulations.

*Service response:* In addition to applying to bald eagle nests as well as golden eagle nests, the new definition differs from the old one in two ways. First, the new definition substitutes ''used'' for ''occupied'' in order to avoid confusion with the term as used in scientific literature where it has very specific connotations. Second, the new definition replaces ''for propagation purposes'' with ''for purposes of reproduction,'' because ''propagation'' sometimes refers to human-induced breeding, whereas ''reproduction'' more plainly means what is intended.

*Comment:* The definition of ''inactive nest'' is inconsistent with the National Bald Eagle Management Guidelines, which use the terms ''active nest'' and ''alternate nest.''

*Service response:* The NBEMG use the following terminology: An ''active nest''

is a nest that is attended (built, maintained or used) by a pair of bald eagles during a given breeding season, whether or not eggs are laid. An ''alternate nest'' is a nest that is not used for breeding by eagles during a given breeding season (NBEMG, pg. 17). The definition of ''inactive nest'' in these regulations is not consistent with the terminology applied in the Guidelines because the definitions serve different purposes. The Guidelines distinguish between ''active'' and ''alternate nests'' in order to recommend different practices to avoid disturbing eagles. An ''alternate nest'' as defined in the Guidelines is not the same concept as an ''inactive nest'' in the regulations. As defined in the Guidelines, an ''alternate nest'' can also be an ''active nest'' if it was attended during the breeding season, but not used for breeding. This distinguishes it from a nest that is completely unattended during the course of a breeding season (which had it been defined, might have been called an ''inactive nest,'' although that definition should also include any nest outside the breeding season). The Guidelines recognize that disturbance can only occur if eagles at some point notice something that agitates them (in addition to other factors), and therefore an eagle could be disturbed at an attended nest during the breeding season, thereby causing the attended nest to become alternate. Therefore, recommendations for conducting activities during the nesting season near nests that might go either way (might become alternate nests or might be used for breeding purposes), when no nest has yet been definitively selected by eagles in the territory, are as strong as for nests that are selected for breeding purposes.

In contrast, the regulations distinguish between nests that are not being used at present for breeding purposes (including the 10 days just prior to an egg being laid) to ensure there is no associated take of eggs or nestlings, and that eagles are not prevented from laying eggs in a nest they have selected to breed in that season. An ''inactive nest'' under the regulations would theoretically include some nests deemed ''active'' under the Guidelines if it was attended by eagles during that breeding season (at least 10 days prior), but not used for breeding purposes. The aim is different: eagles at that nest could have been disturbed during the earlier period when they attended the nest—hence its designation as ''active'' under the Guidelines to minimize that possibility. But if eagles are not using it for breeding purposes as evidenced by lack of attendance for at least 10 days (whether within or outside of the nesting season) its removal would have significantly different impacts to eagles than removal of a nest that is occupied or attended during the past 10 days for purposes of breeding, leading to the designation in the regulations of such nests as ''inactive nests.''

*Comment:* The definition of ''inactive nest'' is inconsistent with the existing definition.

*Service response:* The new definition is consistent with the old definition, which, in any case, is being removed. The new definition differs primarily in that it includes bald eagle nests as well as golden eagle nests. The second difference is replacement of the phrase ''absence of any adult, egg, or dependent young at the nest for 10 days before the nest is taken'' with ''continuing absence of any adult, egg, or dependent young at the nest for 10 consecutive days immediately prior to, and including, at present.'' The change serves dual purposes. First, it eliminates the inadvertent implication in the old definition that a nest cannot be inactive unless it has been taken. Second, it clarifies that the period of when the nest is not attended has to be current in order for the nest be considered inactive. The last difference is the addition of the following sentence: ''An inactive nest may become active again and remains protected under the Eagle Act.'' This sentence is included to clarify that nests that become inactive generally retain significant biological value to eagles, and are subject to the same prohibitions against take as active nests. None of these revisions are inconsistent with the old definition of ''inactive nest.''

*Comment:* Because an inactive nest may become active again and remains protected under the Eagle Act, there should be no distinctions in the level of protection afforded to active and inactive nests. Designation of the nest as inactive for the purposes of this rule might allow for easier granting of permits, even though such a nest might be the only nest structure within a particular pair's territory.

*Service response:* The reason for distinguishing between active nests and inactive nests and for defining the term ''inactive nest'' is because the new nest-take-permit regulation, as well as existing regulations for take of golden eagle nests for resource development and recovery operations (50 CFR 22.25), regulate nests differently depending on whether they are currently active or inactive. Under existing § 22.25, a permit may only be issued for inactive nests. Under the regulations being finalized by this rulemaking, a permit can be issued for an active nest only if the location of the nest poses an immediate threat to safety. This definition is intended to be applied only to questions of whether or not a nest may be taken with reduced risk of associated take of birds. It is not intended to convey any other biological status.

We will consider whether the nest is the only one in the territory. If the take is not necessary to alleviate a safety emergency, before issuing a permit we must find that ''suitable nesting and foraging habitat is available to the area nesting population of eagles to accommodate any eagles displaced by the nest removal'' (§ 22.27(e)(6)).

*Comment:* Is a nest considered ''abandoned'' under the Guidelines still protected by the Eagle Act? The rule should clarify how the Eagle Act applies in this case. Does it prohibit only removal of the structure?

*Service response:* A nest that has been abandoned is not necessarily *permanently* abandoned and remains protected under the Eagle Act. The NBEM Guidelines refer to nest abandonment as follows: ''Nest abandonment occurs when adult eagles desert or stop attending a nest and do not subsequently return and successfully raise young in that nest for the duration of a breeding season .... [N]est abandonment can occur at any point between the time the eagles return to the nesting site for the breeding season and the time when all progeny from the breeding season have dispersed'' (NBEMG, p. 17).

By ''a nest considered abandoned under the Guidelines,'' the commenter may have been referring to the Service's recommendations for nests that have not been active for five years, in which case the Guidelines suggest that the buffer distances the Service recommends around nests may not need to be maintained at that point, since, in general, the probability of disturbing eagles at nests that have not been attended for five years is decreased. However, as the Guidelines continue on to state, ''[t]he nest itself remains protected by other provisions of the Eagle Act, however, and may not be destroyed'' (NBEMG, pg. 11).

*Comment:* ''Territory'' should be defined in the regulation.

*Service response:* This comment was made on the June 5, 2007, proposed rule. The regulations governing nest removal (new § 22.27) use the term ''territory'' to refer to the area where a nest could potentially be relocated. When we released the DEA and re-opened the comment period on the rule,

we proposed to define ''territory'' as ''a defended area that contains, or historically contained, one or more nests within the home range of a mated pair of eagles, and where no more than one pair breeds at a time.''

*Comment:* The last 10 words in the proposed definition of ''territory'' (''where no more than one pair breeds at a time'') should be deleted, since this changes from year to year.

*Service response:* We deleted those last 10 words from the final definition so that it reads: ''[t]erritory means a defended area that contains, or historically contained, one or more nests within the home range of a mated pair of eagles.

*Comment:* The definition of ''territory'' should not include the word ''historically'' because that would encompass areas that eagles have not occupied for many years. Perhaps it could be modified to read ''recently contained'' or ''within 10 years.''

*Service response:* We considered removing the word ''historically'' and adding some limit to the time frame in which a territory could be considered a territory, but rejected the suggestion because a time frame would be arbitrary, and the phrase ''recently contained'' does not have any biological basis. Primarily, we opted to leave ''historically'' within the definition because the rule does not use the word ''territory'' to restrict or authorize any action. The statute itself does not protect or even reference territory. Its only use within these regulations is to refer to the area that will be considered when a nest can feasibly be relocated ''within the same territory to provide a viable nesting option for eagles within that territory, unless such relocation would create a similar threat to safety'' (§ 22.27(a)(2)).

*Comment:* The definition of ''practicable'' is of central importance and should be incorporated into the regulation.

*Service response:* We agree and have defined ''practicable'' in the regulation as ''capable of being done after taking into consideration, relative to the magnitude of the impacts to eagles: (1) the cost of remedy comparative with proponent resources; (2) existing technology; and (3) logistics in light of overall project purposes.'' The phrase ''relative to the magnitude of the impacts to eagles'' is important because whether something is practicable is relative to the risk of not doing it. If the adverse impact is small, it may be impracticable to undertake enormously costly measures to avoid it, but it if the impact will be extremely detrimental, increased measures may be deemed reasonable and practicable. For example, it may not be practicable to find a new site for a proposed large-scale wind turbine project in order to avoid disturbing one nesting pair of eagles, whereas it may be considered practicable to find an alternative if the site originally proposed was within a major migration corridor for golden eagles and would likely result in significant eagle mortalities.

*Comment:* The definition of ''practicable'' must not include any consideration of the applicant's financial resources. (Some commenters asserted such a consideration would result in too high a bar for large projects with resources, while others were concerned it would result in too low a bar because applicants will always claim not to have enough resources to avoid or minimize impacts.)

*Service response:* We believe ''practicable'' inherently encompasses consideration of what the proponent can muster and marshal towards achieving a goal, whether it be money, time, ingenuity, or other factors that contribute to the chances of being able to accomplish something. Our inclusion of the phrase ''the cost of remedy comparative with proponent resources'' was intended to confirm the integral role such a consideration plays in determining what is practicable. For more discussion on this issue, see our related responses to comments under the heading *Scope and Criteria of 22.26.*

*Comment:* The rule should define ''public welfare'' as ''the well-being of a community, state, region, or nation in matters of health, safety, or order.''

*Service response:* When we released the DEA and re-opened the comment period on the proposed rule, we proposed to base some aspects of the new permit programs on the concept of ''necessary for the public's welfare,'' which we proposed to define as ''needed to maintain society's well-being in matters of health, safety, and order.''

We would have used the concept when demand for take exceeds what is compatible with the preservation of the bald eagle or the golden eagle, to ensure that take that is necessary for the public's welfare be prioritized over other take for other purposes except for Native American religious use and safety emergencies. The concept would also have been central to issuance of eagle nest take permits under new § 22.27, expanding the reasons for which nests could be taken from safety emergencies only, to situations where the take is necessary to protect the public's welfare. However, as a number of commenters observed, the definition was unacceptably broad and subjective, particularly when used as a qualifying factor for nest removal. For example, it could be argued to include any activity that increases a locality's tax base, which could include any commercial activity, and this was not our intent because we do not believe it accords with Congressional intent underpinning the Eagle Act. Although the Eagle Act does incorporate protection of private interests (e.g., protection of livestock from depredating eagles), the language and legislative history of the statute convey a greater degree of protection for eagle nests than for individual eagles. For that reason, we replaced the over-broad term ''the public's welfare'' with the narrower concept of ''public health and safety.'' This will encompass projects that are genuinely necessary to protect people, while excluding projects that may have only intangible benefits incommensurate with the negative impact to eagles from removing a nest. The rule also provides that a nest may be taken for any purpose as long as there is a net benefit to eagles provided either by the activity itself or mitigation for the activity. Had we more time to develop this rule, we might consider adopting a permitting system wherein nests with lesser biological value could be removed for a broader range of purposes without requiring the permittee or activity to provide a net benefit to eagles. However, due to the importance of finalizing this rulemaking expeditiously, the analysis of the merits, complexities, and potential drawbacks of such an approach, if undertaken, will have to be addressed in the implementation guidance for this regulation or in a future rulemaking.

*Comment:* The definition of ''public welfare'' is too broad and vague and greatly exceeds the purposes for which golden eagle nest take now can be permitted. Clarification is needed as to what specific types of activities will fall under ''public welfare.''

*Service response:* We agree that ''the public's welfare'' was too vague a concept and very difficult to define. As discussed in the preceding response, the final rule incorporates the narrower concept of ''public health and safety.''

*Comment:* ''Public welfare'' should not include transportation projects, which should be treated like any construction or development.

*Service response:* We replaced the concept of ''the public's welfare with ''public health and safety,'' to provide parameters on what can qualify under the term. However, we intend that the concept of ''public health and safety'' will sometimes, though not necessarily always, apply to transportation projects.

For example, where a highway department proposes to modify a highway interchange to reduce a disproportionately high incidence of traffic accidents, if the modifications needed to improve safety cannot practicably avoid an eagle nest, the project may qualify for a nest removal permit, depending on whether the remaining permit issuance criteria can be met.

*Comment:* The rule should define ''cumulative impacts'' as ''the incremental environmental impact or effect of the proposed action, together with impacts of past, present, and reasonably foreseeable future actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.''

*Service response:* We largely agree with this comment and have adopted the first sentence suggested by the commenter as the definition of ''cumulative effects'' within this rule. We omitted the second sentence because we believe it unnecessarily narrowed the definition by suggesting that cumulative impacts occur only over time, whereas cumulative impacts also can refer to multiple impacts from a variety of sources occurring concurrently with one another.

*Comment:* The rule should define ''indirect effects'' as ''effects caused by the action and which are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. Indirect impacts include those impacts resulting from interrelated actions that are part of a larger action and depend on the larger action for their justification and from interdependent actions that have no independent utility apart from the proposed activity.''

*Service response:* The definition suggested by the commenter is too broad for the context of this regulation. Beyond what is appropriate for us to consider as part of the NEPA analysis (where one is required), we do not intend to base permit decisions on how growth enabled by a proposed action would affect air, water, and other natural ecosystems. The permit authorizes eagle take and the issuance criteria will include consideration of reasonably foreseeable secondary effects *on eagles* to ensure that authorized take is compatible with the preservation of the bald eagle or the golden eagle. To the degree that these secondary or ''indirect effects'' will foreseeably result in additional impacts to eagles, we will consider those impacts. However, impacts to air quality and water quality may require authorizations from other agencies, and the responsibility to authorize or prohibit such impacts is generally beyond our authority.

We agree with the commenter that a definition of secondary or indirect effects may be beneficial. In the proposed rule, we used the term ''secondary impacts'' to refer to impacts that result from an activity after an initial action (e.g. building a road has an impact, and the traffic that results is a secondary impact). We had considered using the term ''indirect effects'' but felt it was unsatisfactory because secondary impacts are often direct. They may occur somewhat later in time, but they are the direct result of the first action and may directly affect eagles (e.g., without the road having been built, there would be no vehicular traffic). However, the term ''secondary impacts'' has its own drawbacks; most notably it could be interpreted to omit any impacts that were tertiary or beyond. For that reason, and because ''indirect effects'' is used much more commonly, we are replacing the term ''secondary impacts'' with ''indirect effects.''

When we re-opened the comment period on the rule in August 2008, we proposed to define ''indirect effects'' as ''effects that are caused by an action and either occur later in time or are physically manifested beyond the immediate impacts of the action, but are still reasonably foreseeable.'' We modified that proposed definition to clarify that the proposed action can be a contributing factor to the effect and does not have to be the sole cause. The final definition of ''indirect effects'' under this rule is: ''effects for which a proposed action is a cause, and which may occur later in time and/or be physically manifested beyond the initial impacts of the action, but are still reasonably likely to occur.''

*Comment:* ''Indirect effects'' must include the requirement of a reasonably close causal relationship between the environmental effect and the alleged cause.

*Service response:* We agree with this comment, and will address this issue in more depth in the implementation guidance for these regulations.

*Comment:* The rule should require the Director to consider both cumulative impacts and indirect effects before concluding compatibility with preservation of the eagle.

*Service response:* The final rule requires the Service to consider indirect effects when assessing the scope of the impact, and it requires us to consider cumulative effects in determining whether the take will be compatible with the preservation of the bald eagle or the golden eagle.

*Comment:* ''Cumulative effects'' should not be considered because each permit application will be assessed at the time it is processed.

*Service response:* This comment appears to misunderstand the essential concept of cumulative effects, which no matter how defined, must include consideration of more than one effect at a time. The need to assess cumulative effects arises from the fact that combinations of effects can create impacts that would not result from a single effect, and which, in the case of eagles, could threaten their preservation. The assessment of cumulative effects will also be critical to protection of local eagle populations, since it will afford the Service a view of where a concentration of impacts may be occurring, a view that otherwise may not in every case be adequately examined during the permit-issuance process.

*Comment:* The definition of ''cumulative effects'' overreaches and is not supported by the Eagle Act. The regulations should adopt the approach the Service is imposing on itself in revisions to ESA interagency coordination regulations, that is: for the effect to be reasonably certain to occur, the Service must have clear and substantial information that the proposed action is an essential cause. It would put both statutes on the same definitional footing and eliminate confusion.

*Service response:* The revisions to ESA interagency coordination regulations have been withdrawn. Regardless, they pertained to a different statute, the ESA, and are not appropriate under the Eagle Act, which has separate standards and a different mandate. Also, the commenter appears to be merging the (now withdrawn) ESA section 7 definitions for ''cumulative effects'' and ''indirect effects.'' Under both the retracted and the reinstated ESA regulations, ''cumulative effects'' are limited to effects that are ''reasonably certain to occur.'' Preservation of the bald eagle and the golden eagle may not be achieved if the Service must carry the burden of proving an effect will occur before it can be prevented, which would effectively be the case if the only cumulative effects we could consider were those that are reasonably certain to occur. The ESA regulatory definition of ''cumulative effects'' is not related to the concept of an ''essential cause,'' as the

commenter mistakenly suggests. ''Essential cause'' was used under the withdrawn ESA section 7 regulations to clarify the definition of ''indirect effects.'' For purposes of permitting under the Eagle Act, we define ''cumulative effects'' as ''the incremental environmental impact or effect of the proposed action, together with impacts of past, present, and reasonably foreseeable future actions.''

*Other*

*Comment:* ''Absence of data'' should not be used to deny take authorization for infrastructure projects that promote public safety and welfare; rather the ''best available science'' should be used.

*Service response:* We certainly believe that the best available science should be used. However, the Eagle Act requires the Secretary of the Interior to determine that take will be compatible with the preservation of eagles before he or she may authorize the take. To permit take without sufficient data to show that it will not result in a decline in the eagle population would violate the statutory mandate.

*Comment:* Will any activities be exempt from the take provisions of the Eagle Act?

*Service response:* What is prohibited is ''take,'' not the activities that result in take. In any case, we cannot exempt any take of bald eagles from the permit requirement imposed by the Eagle Act. Any such exemption would have to be provided by an amendment to the Act by Congress.

*Comment:* In addressing the information-collection requirements of the Paperwork Reduction Act, the Service has probably underestimated the public reporting burden for completing an application. Forest Service staff estimate it will take 3-6 person-days to complete the application process.

*Service Response:* The reporting burden we provided was an estimate of the *average* hourly burden we anticipate. For large-scale activities such as the Forest Service management plans, the application process will be much longer than the average. Nevertheless, we have increased our estimate of the average hourly burden from 10 hours to 16 hours and added an estimate of 40 hours for a programmatic take permit. Some programmatic permits may take longer than that to develop; however, once ''templates'' have been developed for particular industries or activities, the process will be more streamlined for subsequent programmatic permits for similar activities.

*Comment:* Far more than 300 permits per year will be needed, partially due to the ''uncertainty caused by the definition of *disturb* and the fact that the guidelines are not possible to follow in general.'' The Service should revise its estimates to reflect the higher demand. The lower estimate is arbitrary and capricious and results in a cost estimate that is too low. The Service should provide documentation, evidence, or rationale for the time estimates.

*Service response:* We want to be clear about the fact that we do not have any reliable documentation or evidence to indicate how many people will seek permits under this regulation, and we received none from the public during the public comment period. These are new permit programs that will apply to a newly-delisted species (bald eagles) and a species for which no similar authorization was previously available (golden eagles). Having said that, we have increased our estimate to 1,168 permit applications and 910 permits issued under both regulations.

We do not agree that the number of permits is larger than it otherwise would be because of the ''uncertainty caused by the definition of disturb.'' In the past, disturb was not defined at all, and the new definition limits the pool of impacts that might otherwise have been considered disturbance in the absence of a definition by establishing a relatively high threshold that requires injury or nest abandonment. We also disagree that the National Bald Eagle Management Guidelines are not possible to follow in general. The Guidelines are more flexible than any guidance that proceeded bald eagle delisting and they recommend the smallest buffers that applied in any part of the country prior to delisting. In Alaska, parts of which have the highest density of bald eagles in the United States, no ESA permits to take eagles were ever available because the bald eagle was never listed under the ESA in Alaska. Since guidelines similar to our National Guidelines (but less flexible) have proven to be possible to follow in Alaska, we believe they can be workably applied in other parts of the U.S. where eagles are present in lower densities.

Finally, as provided in these regulations, we will only issue permits where the take cannot practicably be avoided, which will help minimize the number of permits.

*Comment:* The Service should avoid heightening regulatory burdens with regard to the golden eagle. Golden eagles cause damage to crops and livestock and the location of their nests can restrict agricultural activities on farms and ranches. They are only protected under the Eagle Act in order to better protect juvenile bald eagles, which they resemble. Golden eagles are plentiful and will tolerate a much higher level of take than bald eagles. Therefore the permit-application process and issuance criteria should be much less rigorous than for bald eagles.

*Service response:* Rather than heightening regulatory restrictions, this regulation provides a mechanism for authorizing impacts that otherwise would be prohibited. The Eagle Act prohibits take of both bald eagles and golden eagles. Accordingly, this regulation provides a means to authorize take of golden eagles as well as bald eagles.

The need to protect juvenile bald eagles was the third of three reasons Congress provided for extending Eagle Act protection to golden eagles. In a joint resolution amending the Act, Congress stated ''Whereas the population of the golden eagle has declined at such an alarming rate that it is now threatened with extinction; and Whereas the golden eagle should be preserved because of its value to agriculture in the control of rodents; and Whereas protection for the golden eagle will afford greater protection for the bald eagle...'' (Bald and Golden Eagle Protection Act Amendments of 1962, Pub. L. No. 87-884, 76 Stat. 1246 (1962).

Contrary to the statements made by the commenter that golden eagles are plentiful and will tolerate a higher level of take, our data indicate the opposite. In contrast to bald eagles, golden eagle populations do not appear to be increasing, and may be declining in some parts of their range, possibly due to loss of habitat to support their prey base. Overall, our data for golden eagles are not as comprehensive as for bald eagles, and, under the Eagle Act, we cannot issue take permits for golden eagles unless we have enough data to make the determination that the take to be authorized will be compatible with the preservation of golden eagles.

Golden eagles do sometimes prey on newborn livestock, and losses to individual producers can occasionally be significant. However, the economic benefit provided by golden eagles (as recognized by Congress) consuming rabbits, rodents and other prey that otherwise would damage crops likely far outweighs any economic losses to the agricultural industry.

Finally, golden eagles have enormous cultural significance to many Americans, particularly many Native Americans. Even without consideration of the other reasons why golden eagles were protected by Congress, the cultural and spiritual value accorded to golden eagles justifies the level of protection

they share with bald eagles under the Eagle Act.

*Comment:* The economic analysis should not be limited to a pre- versus post-delisting assessment. Rather, the Service should consider the costs of the regulatory program in comparison to other recovered species.

*Service response:* Comparing the costs of this permit program to the costs of making a similar permit available for other recovered species would yield little or no useful information because we have never before created a new permit regulation to authorize take of a recently-delisted species. Even had we done so, we doubt the comparison would be very useful because, unlike any other species, bald eagles and golden eagles are protected by the Eagle Act, and it is the unique protections of that statute that fundamentally shape this regulation.

*Comment:* The Service, by stating that it only rarely expects to issue permits for take associated with activities that conform to the guidelines, appears to have foreclosed the option to seek and gain assurance against prosecution under the Eagle Act through issuance of a permit.

*Service response:* While we will continue to discourage applications for take we believe is unlikely to occur, preferring to put our agency's limited resources towards our mission of conserving wildlife, we anticipate issuing some of these permits. The monitoring and reporting that will be required of permittees will be of value, since it will provide documentation we rarely would otherwise obtain: whether the activities we thought would not disturb eagles do result in take. Normally, permittee monitoring will be for activities that are likely to take eagles. In addition, the Service may exercise enforcement discretion by not referring such take for prosecution under the MBTA or the Eagle Act if it occurs despite the low probability.

*Comment:* Sensitive nest data maintained by States will be made public through the Freedom of Information Act (FOIA) process, jeopardizing the safety of the nest.

*Service response:* Although we do not share this State commenter's concern that eagle nests will be less protected if their location is known, we respect the State's intentions, and to the degree we can under law, we will honor its wishes to safeguard State nest data. However, we cannot circumvent the requirements of the FOIA.

*Comment:* The tenure of depredation permits for hazing eagles should not be increased because it could lead to abuse.

*Service response:* In addition to amending the eagle-depredation-permit regulations under § 22.23 to extend potential permit tenure to up to five years, we included the following language: ''We may amend, suspend, or revoke permits issued for a period of longer than 90 days if new information indicates that revised conditions, suspension, or revocation is necessary to safeguard local or regional eagle populations.''

*Comment:* Penalties for violations should be dramatically increased and the compensation used to develop and implement management plans.

*Service response:* The Service does not establish and cannot effect changes to penalties for violations of the Eagle Act and other statutes we enforce. Congress establishes the penalties.

*Comment:* Due to the unique circumstances of Alaska, the Service should develop streamlined procedures for ensuring that infrastructure projects can comply with the Eagle Act.

*Service response:* We intend to establish working groups with interested States and tribes to develop streamlined procedures to boost the efficacy of this permit program and enhance compliance with the Eagle Act.

*Fees*

*Comment:* The permit-processing fees must be higher to comply with the Service's mandate that permit programs be ''self-sustaining to the extent possible'' as required by 31 U.S.C. 9701(a). The program will drain money that should be used for important conservation needs.

*Service response:* The commenter is correct that the permit application processing fees associated with the new permits are not high enough to allow the Service to recoup even half the cost of issuing them. However, the fees are significantly higher than other permit application processing fees we assess. The fees associated with these regulations must be manageable to small business owners, home owners, and other members of the public who may find a higher fee prohibitive. We are establishing a higher application fee for programmatic permits: $1,000, with a $500 amendment processing fee.

*Comment:* The proposed fees are too high, especially when encouraging landowners in conservation efforts. The Service should consider a designation of ''low-effect'' permits for which a lower permit-application-processing fee would be charged. Also, the Service should consider a lower fee for private landowners and small businesses.

*Service response:* Permits are a ''service'' provided to specific individuals and individual corporations within the public at large. Our agency is directed by Congress and OMB to recoup the costs of permit programs where feasible. The lower the permit processing fees, the larger are the percentage of costs that must be shifted to taxpayers or diverted from other Service responsibilities. Therefore, we do not believe the $500 permit processing fee is unreasonable for applications for individual permits.

While we are not adopting the commenter's suggestion that application fees be less for ''low-effect'' permits, we are establishing a higher fee for permits that will take longer to process; the application-processing-fee for programmatic permits is $1,000. While the typical programmatic permit will likely cost the Service more than twice as much as the typical individual-take permit, we believe the $1,000 application fee, rather than a higher fee more in line with our processing costs, is justified because programmatic permittees will be required to undertake rigorous and potentially costly conservation measures.

Regarding the suggestion that fees be lower than $500 for private landowners and small businesses, if we did that, we would recoup an unacceptably small percentage of the costs of the permit program. Federal, State, tribal and local government agencies will likely constitute a large portion of applicants, but they are exempt from permit application fees. It is inappropriate to require the American taxpayer to bear all the costs of administering permits that primarily benefit private individuals. We believe that the fees associated with this rulemaking are a fair compromise between recouping all of our costs and ensuring that no one is disqualified because he or she cannot afford the permit application-processing fee.

*Comment:* The Service should not charge fees for tribal religious purposes.

*Service response:* We do not charge permit application processing fees for permits for tribal religious purposes. This regulation has no effect on our policy regarding such fees.

*Permits for Take of Eagle Nests*

*Comment:* The final rule should clarify that a safety emergency means a threat to life, not a threat to property.

*Service response:* The regulation includes the following definition of ''safety emergency'': ''a situation that necessitates immediate action to alleviate a threat of bodily harm to humans or eagles.'' However, the rule now provides that permits may be issued to remove inactive nests where

necessary to ensure public health and safety, which includes situations beyond immediate safety emergencies.

*Comment:* Nest removal permits should be available to avert severe financial impacts.

*Service response:* The plain language and legislative history of the Eagle Act prevent us from making permits available to remove eagle nests to reduce financial impacts. Congress amended the Act in 1978 to provide the Secretary of the Interior the ability to authorize take of golden eagle nests that ''interfere with resource development or recovery operations.'' Congress specifically did not include bald eagle nests in this narrowly-focused amendment, nor did it provide us with the ability to authorize golden eagle nest take for purposes as broad as financial impacts, even severe ones. Therefore, we interpret our authority to issue permits to take golden eagle nests as limited to purposes no broader than the 1978 amendment, and for bald eagle nests, even narrower. Take that is necessary to benefit eagles and protect public health and safety is conservative and falls within the narrow range of purposes for which we may issue eagle nest take permits for both species.

*Comment:* Relocation of nests is not always realistic. The final rule should not depend on that approach.

*Service response:* The regulation does not require that nests be relocated. It provides that ''[w]here practicable, the nest should be relocated, or a substitute nest provided, in a suitable site within the same territory to provide a viable nesting option for eagles within that territory, unless such relocation would create a similar threat to safety.'' The rule also specifically provides that permits may be issued under the regulation when nests cannot be relocated.

*Comment:* The rule should specifically state that the applicant must take all reasonable steps to minimize impacts to eagles before a nest is removed to ensure that all alternatives have been exhausted. Such alternatives would include take of nests outside of the breeding season. The applicant must be required to demonstrate that (1) the removal is in the public interest; (2) there is a clear threat to eagle or human safety; and (3) there is no alternative to removal that would alleviate the emergency.

*Service response:* Nests that need to be removed because they pose a safety hazard *should* be removed outside the breeding season. However, removing nests outside of nesting season is not always possible. Thus, the rule provides that, in a genuine safety emergency, active nests can be removed if necessary to prevent imminent death or physical injury to people or eagles. We have added provisions to the rule for programmatic authorizations to remove nests for situations where the need for nest removal will be ongoing (e.g., at some airports or for utilities that maintain power lines). Programmatic nest-removal permits would be available only when the applicant has developed comprehensive measures to reduce take to the degree practicable.

In response to the commenter's specific suggestions, we consider (1) redundant with (2) because any time there is a clear threat to eagle or human safety, correcting the situation will be in the public interest. The proposed rule already incorporated the substance of (2). We have added the language suggested under (3) to the evaluation criteria of the rule at § 22.27(d).

*Comment:* Nest-removal permits for airports should be guaranteed. Denial of such an application should not be an option.

*Service response:* A permit is never ''guaranteed.'' The statutory mandate that the take be compatible with the preservation of the bald eagle or the golden eagle must be met. Also, the permit will not be issued if there is an alternative to nest removal that would alleviate the threat to human and/or eagle safety or public welfare.

*Comment:* Airports are a good example of how safety issues are invoked when they do not actually exist. Airports have done a poor job of assessing risks before resorting to lethal take and habitat destruction.

*Service response:* Although airports are already subject to FAA regulations that require them to assess and mitigate for wildlife hazards (14 CFR 139.337(b) and (c)), this permit should improve the alternatives analysis that airports undertake because the programmatic nest-take permit will require permittees to undertake comprehensive measures to reduce take.

*Comment:* Emergency nest take will need to be authorized more than five times a year, largely due to airport safety concerns.

*Service response:* We based our estimate on the number of emergency situations that arose in the past few years. However, we have revised our estimate for the number of nest take permits we anticipate issuing from five permits a year to 48 permits per year. The higher estimate is based on the somewhat broader parameters established in the final rule for when nest take may be authorized, as well as our expectation that bald eagle populations will continue to grow in most regions. On the other hand, as airports develop comprehensive measures to reduce the need for take permits, we will issue them programmatic authorizations, lowering the total number of authorizations required.

*Comment:* The one-year tenure is not long enough to address the hazing needed to prevent re-nesting at airports.

*Service response:* Hazing requires a permit only if it is likely to result in disturbance as defined in regulation. Permits to haze eagles under those circumstances will not be authorized under either of the new permit categories, since § 22.26 applies only to take that is associated with, but not the purpose of the activity, whereas hazing is intentional; and § 22.27 authorizes nest take. Permits to haze eagles are already issued under existing regulations at § 22.23. However, those regulations until now did not allow us to issue permits for a period longer than 90 days. This rulemaking amends § 22.23 to allow an extended tenure of up to five years for hazing, only.

*Comment:* What if action is needed before a nest-removal permit can be issued? The proposed rule preamble states that it may take 40 hours to process such a permit. The time needs to be shorter and needs to be codified in the rule, or else a statement is needed that if the Service does not respond quickly enough, the take is authorized.

*Service response:* The rule estimates that it will take a total of 40 Service staff hours to process the nest-take permit, not 40 consecutive hours. More than one Service employee will need to participate in the process. We cannot authorize bald eagle take without issuing a permit. If a *bona fide* emergency response action must be taken before the permit can be issued, the Service may exercise enforcement discretion by not referring such take for prosecution under the MBTA or the Eagle Act.

*Comment:* An on-site inspection by the Service should be required before issuing a nest-take permit, for oversight.

*Service response:* We will not always be able to conduct an on-site inspection before issuing the permit. If the situation is an emergency, there may not be sufficient time for us to travel to the area. Second, some areas (e.g., parts of Alaska) may be remote, making travel expensive and time-consuming. Finally, due to limited staff resources, we will not necessarily have personnel available to conduct a site visit.

*Comment:* The rule should require the permittee to pay for any care needed for eggs or nestlings.

*Service response:* Active nests may only be taken in cases of *bona fide* safety emergencies. Therefore, care of viable eggs or nestlings will only be necessary in some emergency situations. Because emergencies are intrinsically unplanned, we do not consider it justified to ask the permittee to pay for rehabilitative care that may be necessitated by circumstances outside the permittee's control.

*Comment:* The rule should require mitigation payments for nest removal. Otherwise, it creates a financial incentive to remove nests.

*Service response:* Nest removal permits will be available only where: (1) necessary to alleviate a safety emergency; (2) necessary to ensure public health and safety; (3) the nest is built on, and obstructs the use of, a human-engineered structure; or (4) the project, or mitigation for project, will provide a long-term benefit to eagles. Under the first scenario, financial incentives are not germane. Under the second and third scenarios, some mitigation may be required, depending on the particular situation, including the availability of other nests in the territory, whether the applicant could have taken reasonable steps to prevent eagles from nesting on the structure, and other factors. Under (4), the permittee would be required to provide compensatory mitigation designed to provide a net benefit to eagles, that is, to more than compensate for the biological impacts of the nest removal. If, despite the cost of compensatory mitigation, the permittee profits from removing the nest, the profit should not be an issue, since the overall effect on eagles will be beneficial.

*Comment:* The rule should clarify that lethal take of eagles is not an option under this permit.

*Service response:* We added the following language to the final regulation: ''This permit does not authorize intentional, lethal take of eagles.''

*Comment:* The rule should provide that the permit ''will'' (rather than ''may'') authorize take of eagles, eggs, or nestlings associated with the removed nest to protect the permittee from liability due to incidental take.

*Service response:* The permit may or may not authorize take of eagles associated with nest removal, and where take is authorized, the method of take will be specified (e.g., collection and disposition of live nestlings, disturbance of adults, etc). For inactive nest take, authorization to take eagles in addition to the nest would usually not be necessary or appropriate.

*Comment:* A programmatic permit is needed for operations that need to remove nests regularly. For example, locations of all eagle nests on transmission and distribution facilities may not be known, complicating the permit process.

*Service response:* We agree with this comment and added provisions to the final regulation for programmatic nest removal ''provided the permittee complies with comprehensive measures that are developed in coordination with the Service, designed to reduce take to the maximum degree practicable.''

*Comment:* Will the new nest-take permit affect permits issued under 50 CFR 22.25 for take of golden eagle nests for resource-development-and-recovery operations?

*Service response:* The new permit for nest removal is unlikely to affect issuance of permits under § 22.25. Although, it includes permit issuance criteria that prioritize take for certain purposes over others, the interests that are prioritized above resource-development-and-recovery operations are compelling government interests: public health and safety, and upholding our trust responsibilities towards Native American tribes by ensuring that eagles continue to be available for religious ceremonies. Based on past history, we anticipate only a few requests to remove golden eagle nests for health and safety. Although regulations have existed for decades that would enable us to issue permits to tribes to take eagle nests for religious purposes, we have had only one such request to date. As such, we think the new nest take authorization under § 22.27 will not affect how we administer permits under § 22.25.

*Comment:* The provision to allow take of golden eagle nests during resource-recovery operations based on 10 days of nest inactivity is at odds with long-term occupancy of nests demonstrated by the species, and needs to be better evaluated.

*Service response:* The provision the commenter objects to is codified in existing regulations that predate this rulemaking. Nevertheless, we did re-examine the language during this rulemaking process, which extended the definition of ''inactive nest'' to apply to bald eagle nests in addition to golden eagle nests. As we explain in our discussion above regarding the new definition of ''inactive nest,'' the distinction between active and inactive nests is for the purpose of evaluating whether or not a nest may be taken with reduced risk of associated take of birds. The nest is protected under the Eagle Act whether active or inactive and may not be taken without a permit.

*Comment:* The rule should explicitly state that when evaluating whether suitable habitat is available, constructed nest platforms are not considered available suitable habitat. Otherwise, entire local populations could be displaced to nest platforms if a highway was to go through nesting habitat.

*Service response:* Suitable habitat might include constructed nest platforms if they are located in areas with adequate foraging and perching sites, and other features necessary for them to be viable breeding sites.

*Comment:* We strongly suggest including a narrower and more detailed definition of ''public's welfare,'' and a prioritization scheme where the highest priority for nest removal permits is given to ''projects that are determined to promote the greatest common societal and environmental good.''

*Service response:* We replaced the term ''the public's welfare'' with the narrower concept of ''public health and safety.'' For more discussion of this issue, see our response to a comment under *Scope and Criteria of 22.2.*

*Comment:* The definition of ''the public's welfare'' may be interpreted too narrowly for purposes of nest removal. The final rule should explicitly provide that infrastructure projects ''to maintain or expand domestic energy production and delivery fall within the scope of projects necessary for public welfare.''

*Service response:* Under this final rule, permits to remove eagle nests will be available only for safety emergencies, public health and safety, nests located on human-engineered structures where the nest interferes with the intended use of the structure, or for projects that provide a net benefit to eagles. Thus, we can issue a permit to remove a nest where necessary to protect *any* interest, including where necessary ''to maintain or expand domestic energy production,'' as long as the project proponent will implement conservation measures that provide an overall benefit to eagles greater than the adverse effect of nest removal (and the other permit issuance criteria are met).

*Comment:* A permit to take a nest for ''the public's welfare'' should be available whether the nest is active or inactive.

*Service response:* The Eagle Act requires the take to be *necessary* to protect an interest. Taking an active nest should only be necessary in a safety emergency; otherwise the take can be delayed until the nest is inactive so there is less risk of a loss of productivity and no risk of associated take of eggs or young.

*Comment:* Take of nests should not be allowed for anything other than a safety emergency.

*Service response:* Limiting nest take to safety emergencies has the potential to create unacceptable gridlock across the United States. Many projects and activities that benefit society would be disqualified, resulting in untenable degradation of social services and infrastructure.

*Comment:* The Service should not issue nest-take permits where the nest is the only structure in a territory or if its removal would interfere with future reproduction in that territory.

*Service response:* Where the take is not necessary to alleviate a safety emergency, we will consider whether the nest is the only one in the territory. Unless a safety emergency necessitates the nest removal, before issuing a permit under § 22.27, we must find that ''suitable nesting and foraging habitat is available to the area nesting population of eagles to accommodate any eagles displaced by the nest removal.''

*Comment:* The Service should not issue a programmatic nest permit to the Federal Aviation Administration for nationwide airport coverage because, with no biologists, it will err on the side of human safety and remove nests that pose little threat.

*Service response:* We do not anticipate issuing a single, nationally-applicable permit to the FAA. At this point, we envision issuing permits to individual airports and county or regional airport authorities.

*Comment:* The Service's estimate of only 30 programmatic nest take permits per year is too low. That many would probably be needed in Alaska alone.

*Service response:* We have increased our estimate of how many programmatic permits we will issue – but only by 10, to 40 permits, annually. Programmatic permits will be issued only where ACPs are implemented to reduce take to a level that is unavoidable. The process of developing most programmatic permits will be more time-consuming than for most individual permits, at least until we have developed ''templates'' applicable to other permits for the same or similar activities. Thus, we think it unlikely we will be issuing more than 40 such permits per year nationwide. The permits we are creating through this rulemaking are for take that is necessary, not take that is merely convenient or more profitable than avoiding the take.

*Comment:* The rule should include a separate nest-take category for situations where eagles nest on a pre-existing man-made structure.

*Service response:* We thought this idea had merit and added language to the final rule that provides for removal of nests that are built on human-engineered structures, creating ''a functional hazard that renders the structure inoperable for its intended use.''

*Rulemaking Process*

*Comment:* Tribal consultation should have been sought prior to proposing this regulation. How can the government claim to have considered cultural values without proper government-to-government consultation with the tribes?

*Service response:* We sent each federally-recognized tribe a letter soliciting input on this action when the proposed rule was published in the **Federal Register**. Even though the comment period was open for 90 days, we received only three letters from tribes and no requests to extend the comment period. The Service sent a second letter to the tribes when the DEA was released, and several Service Regional offices have hosted or attended meetings in order to clarify the Service's actions and hear tribal concerns. However, due to the need to promulgate permit regulations in an expeditious manner, there was not enough time to fully engage any tribes in formal government-to-government consultation during the rule-making period. We do intend to do so with interested tribes during the next phase: development of implementation guidance.

As part of developing the implementation guidance, we intend to work with tribes to establish protocols regarding the types of permit applications and potential actions on which individual tribes would like the Service to consult with them. We will also consider cultural values, including Native American cultural values as part of the NHPA's section 106 review. (See our discussion in the **Required Determinations** section below under *National Historic Preservation Act.*)

*Comment:* The comment period was too short for the public to provide meaningful input.

*Service response:* The initial comment period for the rule was 90 days, which is standard for a significant rule. We also re-opened the comment period on the rule for another 30 days when we released the DEA in August 2008. Therefore, the total length of time the rule was open for public comment (120 days) was longer than for most rules.

*Comment:* States should have been given a greater role in developing the regulation, particularly since it will require investment of significant State resources. The Service should delay completion of the regulations and form a work group with the State fish and wildlife agencies to develop more administratively- and economically-feasible regulations.

*Service response:* We did not delay completion of the regulations because there is a genuine, substantial, and impending public need for these permits. Without them, many activities, including critical infrastructure projects, that might disturb or otherwise take eagles have no means of gaining authorization for the take, and are either on hold or compelled to violate the law. Due to the need to promulgate the regulations without further delay, we were unable to coordinate closely with States and tribes during the rule-development phase. However, we plan to establish work groups with State and tribal representation to assist with development of implementation guidance for the regulations. The implementation guidance will address numerous important facets regarding administration of the permit program that have yet to be worked out, including how the Service will coordinate with States and tribes during the permit-application-and-processing phase.

*Comment:* The Service should delay implementation until it gets an adequate monitoring program in place for both species throughout the U.S. If the Service will not delay completion or implementation of the regulations, they should be enacted on a short-term basis, allowing the Service to work cooperatively with the States to develop a more comprehensive, data-driven permitting system.

*Service response:* If, after implementation, the regulations need revision, we can amend them. There is no need to finalize them with a built-in expiration clause. We agree that more data, monitoring, and surveys would be useful, and we plan to pursue possibilities for additional funding and partnerships to bolster the scientific data currently available for both eagle species.

*Comment:* The Service should publish the proposed rule with the changes noted in the DEA. Without being able to review the explicit regulatory changes in context, the public cannot adequately evaluate the proposal.

*Service response:* We believe the August 2008 Notice of Availability for the DEA and the DEA itself effectively described the changes that we were proposing from the rule we proposed in June 2007. Republishing a proposed rule incorporating the changes noted in the DEA would have triggered a number of

regulatory requirements that would have been onerous and—more important—time consuming. Due to the need to finalize the regulations expeditiously, we believe that the approach we took was in the best interests of the public.

*Endangered Species Act Consideration*

Consultation pursuant to section 7(a)(2) of the Endangered Species Act is not required for these regulations. The regulations do not directly or indirectly authorize any activities that would result in adverse effects to listed species, so they will not affect any listed species or critical habitat. We will conduct section 7 consultations on the issuance of any future permits where the authorized activities may affect listed species or critical habitat.

**Required Determinations**

*Energy Supply, Distribution or Use (E.O. 13211).* On May 18, 2001, the President issued Executive Order 13211 addressing regulations that affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use, except that it provides means to authorize otherwise-prohibited impacts to eagles that may be necessary in the course of supplying and distributing some energy in particular localities. This action is not a significant energy action, and no Statement of Energy Effects is required.

*Regulatory Planning and Review (Executive Order 12866).* The Office of Management and Budget (OMB) has determined that this rule is significant and has reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

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

This rule may benefit a variety of small businesses including real estate developers and brokers (NAIC 531); construction companies (NAIC 23); forestry and logging (NAIC 113), farming (NAIC 111), and ranching operations (NAIC 112); tourism companies (NAIC 713); utility companies (NAIC 221); and others. Across the United States, there are 255,871 small real estate companies; 617,737 small construction companies; 9,596 small forestry and logging companies; 46,730 small tourism companies; and 10,173 small utility companies. We anticipate receiving about 1,140 §22.26 take permit applications nationwide annually, and about 90 § 22.27 nest take applications (including 20 applications for programmatic permits under each of the two regulations).

We anticipate issuing approximately 830 standard § 22.26 take authorizations across the United States, 40 standard nest-take permits, and 40 programmatic permits, per year. Based on past permit authorizations under the ESA, we anticipate approximately one-third of new permit applicants would be small businesses. If 303 permittees are small businesses within 4–6 different industries across the United States, the demand would not represent a substantial number of small entities in individual industries. The economic impact to individual small businesses is dependent on the type of activity in which each business engages. As noted in the economic analysis in the preamble above, permit applicants will incur some costs assembling the necessary information for the permit application, permit fees, and the costs of monitoring and reporting associated with the permit. For example, applicants will have to pay $500 for processing a permit application under § 22.26 and § 22.27, and $150 for permit amendments. In addition, particularly for larger projects, there may be consultant and/or attorney's fees ranging from a few hundred to thousands of dollars. However, if the permit applicant is successful, the economic benefits to the small entity should outweigh the economic costs of obtaining the permit. For some individual businesses, the benefit may be substantial.

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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

a. Will not have an annual effect on the economy of $100 million or more. The principal economic effect of the rule will be to allow the general public, small businesses, industry and government agencies to obtain take permits that allow activities on their property where avoiding impacts to eagles is not practicable. We are anticipating that, due to increasing bald eagle populations, there will be an increase in the number of applications for permits under this rule compared to the number of people who sought authorization to take eagles under the ESA, even though not all activities that require ESA authorization would require Eagle Act authorization. All types of small entities that benefited from the issuance of permits under the ESA will continue to benefit from permits issued under this rule.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Eagle take permits will not significantly affect costs or prices in any sector of the economy. This rule will provide a remedy that would allow various members of the general public to pursue otherwise lawful uses of their property where the activity will impact eagles. For example, a person wishing to build on his property in the vicinity of a bald eagle nest may apply under this proposed rule for a permit to disturb eagles, whereas the option would not be possible after delisting without the promulgation of these regulations. Another example would be a utility that wishes to

minimize eagle mortalities and liability to itself and so implements conservation measures to reduce take to the level where any remaining take is unavoidable and unauthorized. Whereas take of eagles is already prohibited by the Eagle Act, the permit represents an opportunity for the public to comply with the law, but it is not mandatory. These regulations make a permit available to authorize take that is currently prohibited under statute, enabling small businesses, industries, government agencies, corporations, and private individuals to conduct legitimate activities in accordance with the law.

c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This regulation establishes a mechanism to permit effects from activities within the United States that would otherwise be prohibited by law. Therefore, the effect on competition between U.S. and foreign-based enterprises will be to benefit U.S. enterprises. There is no anticipated negative economic effect to small businesses resulting from this rule.

*Unfunded Mandates Reform Act.* A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

a. This rule is not a significant regulatory action under the Unfunded Mandates Reform Act. A Small Government Agency Plan is not required. The permit regulations that are established through this rulemaking will not require actions on the part of small governments.

b. This rule is not a significant regulatory action under the Unfunded Mandates Reform Act. This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year.

*Takings (E.O. 12630).* In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule could affect private property by providing owners the opportunity to apply for a permit to authorize take that would otherwise violate the Eagle Act. A takings implication assessment is not required.

*Federalism (E.O. 13132).* In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule will not interfere with the States ability to manage themselves or their funds. Changes in the regulations governing the take of eagles should not result in significant economic impacts because this rule would allow for the continuation of a current activity (take of eagles) albeit under a different statute (shifting from the ESA to the Eagle Act). The new regulatory process provides States the opportunity to cooperate in management of bald eagle permits and eases the process for permit applications. A Federalism Assessment is not required.

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

*Government-to-Government Relationship with Tribes.* In accordance with Executive Order 13175, Consultation and Coordination with Tribal Governments (65 FR 67249, Nov. 9, 2000); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); and 512 DM 2, we have evaluated potential effects on Federally-recognized Indian tribes and have determined that there may be potential effects. Although this rule neither interferes with tribes' ability to manage themselves or their funds nor affects the operations of the eagle-distribution system of the National Eagle Repository, it does implement a new eagle-take permit policy, and some tribes have asserted that take of eagles has significant cultural and spiritual effects on them.

To meet our trust responsibility to tribes with regard to the unique traditional religious and cultural significance of eagles to Native American communities, we intend to minimize impacts by consulting with interested tribes prior to implementation of this rule, and on a case-by-case basis when issuance of individual permits may affect particular tribes. In addition, this rule provides that take of eagles for Native American religious purposes be given priority over take for any other purpose except safety emergencies, which should help ensure that Native American religious needs are not affected by this rule.

When we initially proposed this rule in June 2007, we contacted each recognized tribe with a letter describing this action and soliciting input from the tribe. We received only three comments from tribes on the proposal. We sent a second letter to the tribes when we released the DEA and re-opened the comment period on the proposed rule. In response to our draft EA, we heard from five tribes, three tribal members, and three coalitions or confederations of tribes. The majority of these tribes either asked the Service to extend the comment period on the DEA and re-open rule, or asked the Service to delay finalizing the rulemaking until tribes were given the opportunity to consult with the Service on a government-to-government basis. We denied those requests because of the myriad of other interests that would go unmet if we did not complete and begin implementing the rule in an expeditious manner. However, as noted above, we will engage interested tribes in consultation as we develop the implementation guidance for these regulations.

*National Historic Preservation Act.* Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA) (16 U.S.C 470 *et seq.*) requires Federal agencies to take into account the effects of their undertakings on historic properties. Federal agencies accomplish this by following the Section 106 regulations, ''Protection of Historic Properties'' (36 CFR part 800). The Section 106 regulations set forth a process by which agencies: (1) evaluate the effects of any Federal undertaking on historic properties (properties included in, or eligible for inclusion in, the National Register of Historic Places (National Register)); (2) consult with State Historic Preservation Officers, Tribal Historic Preservation Officers, and other appropriate consulting parties regarding the identification and evaluation of historic properties, assessment of effects on historic properties, and the resolution of adverse effects; and (3) consult with appropriate American Indian tribes and Native Hawaiian organizations to determine whether they have concerns about historic properties of religious and cultural significance in areas of these Federal undertakings.

Some tribes and tribal members may consider eagle nests and other areas where eagles are present to be sacred sites provided for in the American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996) (see below). Such sites may also be considered properties of traditional religious and cultural importance to an Indian tribe (commonly referred to as Traditional Cultural Properties or TCPs), and as potential historic properties of religious and cultural importance under the NHPA. Such sites are not limited to currently recognized Indian lands, and they occur across the entire aboriginal settlement area. TCPs may be areas where eagles nest and have nested within living memory. Thus, a landform or landscape known for eagle

habitation—a ridgeline, canyon, lakeshore, river valley, mesa, mountain, etc.—may be considered by tribes as suitable for TCP designation.

According to the Section 106 regulations, a property is considered an historic property if it is listed on, *or eligible for* (emphasis added) listing on, the National Register. Therefore, a lack of formal listing does not lessen the need to consider a property; instead, it emphasizes the need for close coordination with appropriate parties at the project planning stage.

Because an eagle or eagle nest can be considered a contributing feature or element of a TCP or sacred site, issuance of the proposed permits for eagles could constitute an undertaking requiring compliance with Section 106 of the NHPA, and may also require government-to-government consultation with tribes. The Service would comply with Section 106 on a case-by-case basis for permits that have the potential to have effects on historic properties. Where issuance of a permit has the potential to affect a TCP, the Service Regional Migratory Bird Permit Office will coordinate with the Service Regional Historic Preservation Officer to ensure necessary NHPA consultations take place with the appropriate parties. We may deny permits or attach additional conditions if necessary to avoid, minimize, or mitigate adverse effects to historic properties. Nothing in these regulations limits the Service from including additional conditions on individual permits for this purpose.

If it is determined to be more efficient for all parties, the Service may consult with appropriate stakeholders to develop State or regional agreements that would govern and resolve compliance with the NHPA for the issuance of permits in specific States or regions.

*American Indian Religious Freedom Act*. The American Indian Religious Freedom Act (AIRFA) (42 U.S.C. 1996) sets forth Federal policy to protect and preserve the inherent right of American Indians to express and exercise their traditional religions, including but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites. Given the special trust relationship between the Federal Government and federally-recognized Indian tribes, the accommodation of tribal religious practices is in furtherance of the duty of the Federal Government to promote tribal self-determination. AIRFA would be construed in conjunction with the Service's trust responsibility to federally-recognized tribes. The Service has incorporated these principles into this regulation. To address the possibility that demand exceeds our scientifically-based take thresholds, the regulation contains permit-issuance criteria to ensure that requests by Native Americans to take eagles from the wild, where the take is necessary to meet the religious purposes of the tribe, are given first priority over all other take except, as necessary, to alleviate safety emergencies.

*Paperwork Reduction Act*. This rule contains new information collection requirements that require approval by the Office of Management and Budget. The OMB has approved these revisions under OMB Control Number 1018-0136, which expires on August 31, 2012. We have addressed all comments received on the proposed rule above in this preamble.

*Title*: Eagle Take Permits, 50 CFR 22.26 and 22.27.

*Service Form Number(s)*: 3-200-71, 3-200-72, 3-202-15, and 3-202-16.

*Affected Public*: Individuals/households, businesses, and State, local, and tribal governments.

*Respondent's Obligation*: Required to obtain or retain a benefit.

*Frequency of Collection*: On occasion.

*Total Annual Nonhour Cost Burden:* $261,250 associated with application or processing fees.

| ACTIVITY/REQUIREMENT | ANNUAL NO. OF RESPONDENTS (non-Federal) | TOTAL ANNUALRESPONSES | COMPLE-TION TIME PER RESPONSE | TOTAL ANNUAL BURDEN HRS |
|---|---|---|---|---|
| FWS Form 3-200-71 – permit application (individual take) | 746 | 746 | 16 hrs | 11,936 |
| FWS Form 3-202-15 – annual report & monitoring under §22.26 | 1,119 | 1,119 | 30 hrs | 33,570 |
| FWS Form 3-200-72 – permit application | 46 | 46 | 16 hrs | 736 |
| FWS Form 3-202-16 monitoring & reporting for §22.27 permit | 40 | 40 | 16 hrs | 640 |
| FWS Forms 3-200-71 and 72 – permit application (programmatic take) | 26 | 26 | 40 hrs | 1,040 |
| Amendments to standard permits | 40 | 40 | 6 hrs | 240 |
| Amendments to programmatic permits | 10 | 10 | 20 hrs | 200 |
| **Totals** | **2,027** | **2,027** | | **48,362** |

We will use the information that we collect on permit applications to determine the eligibility of applicants for permits requested in accordance with the Eagle Act. Eagle permit regulations (50 CFR 22) and general permit regulations (50 CFR 13) stipulate general and specific requirements that when met allow us to issue permits to authorize activities that are otherwise prohibited.

All Service permit applications are in the 3-200 series of forms, each tailored to a specific activity based on the information requirements for specific types of permits. The application forms for other permits authorized under the Eagle Act are covered by OMB Control Number 1018-0022. After publication of this final rule, we will immediately incorporate the new information burdens for 22.26 and 22.27 into OMB Control Number 1018-0022.

We will use two additional forms as (1) the application for a § 22.26 take permit (FWS Form 3-200-71), and (2) the application for take of eagle nests under § 22.27 (FWS Form 3-200-72). We will use new FWS Form 3-202-15 as the annual report form for the § 22.26 eagle take permit, and new FWS Form 3-202-16 as the report form for the § 22.27 nest take permit. The information collected for eagle permits is part of a system of

records covered by the Privacy Act (5 U.S.C. 552(a)).

We estimate receiving 1,120 permit applications for individual takes under § 22.26; 70 applications for nest take permits under § 22.27; and 40 applications for programmatic permits under § 22.26 and § 22.27, annually. We expect about one third may be Federal Government agencies. Therefore, we estimate that approximately 746 non-Federal applicants will apply for eagle-take permits, 46 non-Federal applicants will submit applications for eagle nest take permits, and 26 non-Federal applicants will apply for programmatic permits. We estimate it will take an average of 16 hours to complete an application for an individual take permit. Programmatic permit applications will require more time, particularly at the outset as the first ones are developed for a given industry. As programmatic permits measures are developed for particular industries, the time it will take to apply for these permits will decrease. We estimate that the average programmatic take permit application will require 40 hours to prepare, although early programmatic permits that will serve as the ''prototypes'' for subsequent applications will require more time.

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 public may comment, at any time, on the accuracy of the information collection burden in this rule and may submit any comments to the Information Collection Clearance Officer, Fish and Wildlife Service, Department of the Interior, 1849 C Street, NW., (Mailstop 222-ARLSQ), Washington, D.C. 20240.

*National Environmental Policy Act.* The Service has prepared an environmental assessment of this action, pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). Copies of the final environmental assessment are available on our website at *http://www.fws.gov/migratorybirds/baldeagle.htm*

*Literature Cited*

Good, R. E., R. M. Nielson, H. H. Sawyer, and L. L. McDonald. 2004. Population level survey of golden eagles (*Aquila chrysaetos*) in the Western United States. Final Report submitted to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service. Western Ecosystems Technology, Incorporated; Cheyenne, Wyoming.

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McIntyre, C. L., D.C. Douglas, and M. W. Collopy. 2008. Movements of golden eagles (Aquila chrysaetos) from interior Alaska during their first year of independence. Auk 125:214-224.

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U.S. Fish and Wildlife Service. 2007. National Bald Eagle Management Guidelines, Arlington, Virginia.

**List of Subjects in 50 CFR Part 13**

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and record keeping requirements, Transportation, Wildlife.

**List of Subjects in 50 CFR Part 22**

Birds, Exports, Imports, Migratory Birds, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Regulation Promulgation**

■ For the reasons described in the preamble, we amend Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

## PART 13—GENERAL PERMIT PROCEDURES

■ 1. The authority citation for part 13 continues to read as follows:

**Authority:** 16 U.S.C. 668a, 704, 712, 742j-1, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

■ 2. Amend the table in § 13.11(d)(4) as follows:

■ a. Under the heading ''Bald and Golden Eagle Protection Act,'' remove the entry for ''Eagle Depredation'' and replace it with a new entry for ''Eagle Take Permits—Depredation and Protection of Health and Safety''; and

■ b. Add four entries under ''Bald and Golden Eagle Protection Act'' in the table immediately following the entry for ''Eagle Transport—Native American Religious Purposes,'' to read as follows:

**§ 13.11 Application procedures.**

* * * * *

(d) * * *

(4) *User fees.* * * *

| Type of Permit | CFR citation | Fee | Amendment Fee |
|---|---|---|---|
| * * * * * **Bald and Golden Eagle Protection Act** | | | |
| * * * * * * * | | | |
| Eagle Take permits—Depredation and Protection of Health and Safety | 50 CFR 22 | 100 | |
| * * * * * * * | | | |
| Eagle Take—Associated With but Not the Purpose of an Activity | 50 CFR 22 | 500 | 150 |
| Eagle Take—Associated With but Not the Purpose of an Activity—Programmatic | 50 CFR 22 | 1000 | 500 |
| Eagle Nest Take | 50 CFR 22 | 500 | 150 |
| Eagle Nest Take—Programmatic | 50 CFR 22 | 1000 | 500 |
| * * * * * * * | | | |

* * * * *

■ 3. Amend the table in §13.12(b) as follows:
■ a. Under ''Eagle permits,'' remove the entry for ''Depredation control'' and replace it with ''Depredation and Protection of Health and Safety''; and
■ b. Add to the table the following entries in numerical order by section number to read as follows:

**§ 13.12 General information requirements on applications for permits.**

* * * * *

(b) * * *

| Type of permit | Section |
|---|---|
| * * * * * | |
| Eagle permits: | |
| * * * * * | |
| Depredation and Protection of Health and Safety | 22.23 |
| * * * * * | |
| Eagle Take—Associated With but Not the Purpose of an Activity | 22.26 |
| Eagle Nest Take | 22.27 |
| * * * * * | |

## PART 22—EAGLE PERMITS

■ 4. The authority citation for part 22 continues to read as follows:

**Authority:** 16 U.S.C. 668–668d; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

■ 5. Amend § 22.3 as follows:
■ a. By revising the introductory paragraph to read as set forth below;
■ b. By removing the definition of ''Golden eagle nest'';
■ c. By revising the definitions of ''Inactive nest'' and Take'' to read as set forth below; and
■ d. By adding new definitions for ''Advanced conservation practices'', ''Communal roost site'', ''Cumulative effects'', ''Eagle nest'', ''Foraging area'', ''Important eagle-use area'', ''Indirect effects'', ''Maximum degree achievable'', ''Necessary to ensure public health and safety'', ''Practicable'', ''Programmatic permit'', ''Programmatic take'', ''Safety emergency'' and ''Territory'' to read as set forth below.

**§ 22.3 What definitions do you need to know?**

In addition to the definitions contained in part 10 of this subchapter, and unless the context otherwise requires, in this part 22:

*Advanced conservation practices* means scientifically supportable measures that are approved by the Service and represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable.

* * * * *

*Communal roost site* means an area where eagles gather repeatedly in the course of a season and shelter overnight and sometimes during the day in the event of inclement weather.

*Cumulative effects* means the incremental environmental impact or effect of the proposed action, together with impacts of past, present, and reasonably foreseeable future actions.

* * * * *

*Eagle nest* means any readily identifiable structure built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction.

* * * * *

*Foraging area* means an area where eagles regularly feed during one or more seasons.

* * * * *

*Important eagle-use area* means an eagle nest, foraging area, or communal roost site that eagles rely on for breeding, sheltering, or feeding, and the landscape features surrounding such nest, foraging area, or roost site that are essential for the continued viability of the site for breeding, feeding, or sheltering eagles.

*Inactive nest* means a bald eagle or golden eagle nest that is not currently being used by eagles as determined by the continuing absence of any adult, egg, or dependent young at the nest for at least 10 consecutive days immediately prior to, and including, at present. An inactive nest may become active again and remains protected under the Eagle Act.

*Indirect effects* means effects for which a proposed action is a cause, and which may occur later in time and/or be physically manifested beyond the initial impacts of the action, but are still reasonably likely to occur.

*Maximum degree achievable* means the standard at which any take that occurs is unavoidable despite implementation of advanced conservation practices.

*Necessary to ensure public health and safety* means required to maintain society's well-being in matters of health and safety.

* * * * *

*Practicable* means capable of being done after taking into consideration, relative to the magnitude of the impacts to eagles, the following three things: the cost of remedy compared to proponent resources; existing technology; and logistics in light of overall project purposes.

*Programmatic permit* means a permit that authorizes programmatic take. A programmatic permit can cover other take in addition to programmatic take.

*Programmatic take* means take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified.

* * * * *

*Safety emergency* means a situation that necessitates immediate action to alleviate a threat of bodily harm to humans or eagles.

*Take* means pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb.

*Territory* means an area that contains, or historically contained, one or more nests within the home range of a mated pair of eagles.

* * * * *

■ 6. Amend § 22.4 as follows:
■ a. In paragraph (a), the first sentence, by adding ''and 1018-0136'' immediately following ''1018-0022''; and
■ b. By revising paragraph (b) to read as follows:

**§ 22.4 Information collection requirements.**

* * * * *

(b) Direct comments regarding any aspect of these reporting requirements to the Service Information Collection Control Officer, MS-222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project (1018-0022 and 1018-0136), Washington, DC 20603.

■ 7. Amend § 22.23 by revising:
■ a. The section heading;
■ b. Paragraph (a) introductory text and paragraphs (a)(5) and (a)(6);
■ c. Paragraph (b) introductory text;
■ d. Paragraph (c) introductory text and paragraphs (c)(2) and (c)(3); and
■ e. Paragraph (d), to read as follows:

**§ 22.23 What are the requirements for permits to take depredating eagles and eagles that pose a risk to human or eagle health and safety?**

(a) *How do I apply for a permit?* You must submit applications for permits under this section to the appropriate Regional Director—Attention: Migratory Bird Permit Office. You can find addresses for the appropriate Regional Directors in 50 CFR 2.2. Your application must contain the information and certification required by § 13.12(a) of this subchapter, and the following additional information:

* * * * *

(5) Kind and number of livestock or domestic animals owned by applicant, if applicable;

(6) Kind and amount of alleged damage, or description of the risk posed to human health and safety or eagles; and

* * * * *

(b) *What are the permit conditions?* In addition to the general conditions set forth in part 13 of this subchapter B, permits to take bald or golden eagles under this section are subject to the following conditions:

* * * * *

(c) *Issuance criteria.* The Director will not issue a permit to take bald or golden eagles unless the Director has determined that such taking is compatible with the preservation of the bald or golden eagle. In making such determination, the Director will consider the following:

* * * * *

(2) Whether evidence shows that bald or golden eagles have in fact become seriously injurious to wildlife or to agriculture or other interests in the particular locality to be covered by the permit and the injury complained of is substantial, or that bald or golden eagles pose a significant risk to human or eagle health and safety; and

(3) Whether the only way to abate or prevent the damage caused by the bald or golden eagle is to take some or all of the offending birds.

(d) *Tenure of permits.* The tenure of any permit to take bald or golden eagles under this section is that shown on the face of the permit. We will not issue these permits for terms longer than 90 days, except that permits to authorize disturbance associated with hazing eagles from the vicinity may be valid for up to 5 years. We may amend, suspend, or revoke permits issued for a period of longer than 90 days if new information indicates that revised permit conditions are necessary, or that suspension or revocation is necessary, to safeguard local or regional eagle populations.

■ 8. Amend part 22, subpart C, by adding new § 22.26 and § 22.27 to read as follows:

## Subpart C—Eagle Permits

* * * * *

### § 22.26 Permits for eagle take that is associated with, but not the purpose of, an activity.

(a) *Purpose and scope.* This permit authorizes take of bald eagles and golden eagles where the take is compatible with the preservation of the bald eagle and the golden eagle; necessary to protect an interest in a particular locality; associated with but not the purpose of the activity; and

(1) For individual instances of take: the take cannot practicably be avoided; or

(2) For programmatic take: the take is unavoidable even though advanced conservation practices are being implemented.

(b) *Definitions.* In addition to the definitions contained in part 10 of this subchapter, and § 22.3, the following definition applies in this section:

*Eagle* means a live bald eagle (*Haliaeetus leucocephalus*), live golden eagle (*Aquila chrysaetos*), a bald eagle egg, or a golden eagle egg.

(c) *Permit conditions.* In addition to the conditions set forth in part 13 of this subchapter, which govern permit renewal, amendment, transfer, suspension, revocation, and other procedures and requirements for all permits issued by the Service, your authorization is subject to the following additional conditions:

(1) You must comply with all avoidance, minimization, or other mitigation measures determined by the Director as reasonable and specified in the terms of your permit to compensate for the detrimental effects, including indirect effects, of the permitted activity on the regional eagle population;

(2) You may be required to monitor eagle use of important eagle-use areas where eagles are likely to be affected by your activities for up to 3 years after completion of the activity or as set forth in a separate management plan, as specified on your permit. Unless different monitoring protocols are required under a separate management plan approved by the Service and denoted on the permit, monitoring consists of periodic site visits, during the season(s) when eagles would normally be present, to the area where the take is likely to occur, and noting whether eagles continue to nest, roost, or forage there. The periodic monitoring is required for the duration of the activity that is likely to cause take (during the season(s) that eagles would normally be present). The frequency and duration of required monitoring *after* the activity is completed will depend on the form and magnitude of the anticipated take and the objectives of associated conservation measures, not to exceed what is reasonable to meet the primary purpose of the monitoring, which is to provide data needed by the Service regarding the impacts of human activity on eagles for purposes of adaptive management. Monitoring will not be required beyond 3 years after completion of an activity that was likely to cause take. For ongoing activities and enduring site features that continue to be likely to result in take, periodic monitoring may be required for as long as the data are needed to assess impacts to eagles.

(3) You must submit an annual report summarizing the information you obtained through monitoring to the Service every year that your permit is valid and for up to 3 years after completion of the activity or termination of the permit, as specified in your permit. If your permit expires or is suspended or revoked before the activity is completed, you must submit the report within 60 days of such date. Reporting requirements include:

(i) Whether eagles are observed using the important eagle-use areas designated on the permit; and

(ii) Description of the human activities conducted at the site when eagles are observed.

(4) While the permit is valid and for up to 3 years after it expires, you must allow Service personnel, or other qualified persons designated by the Service, access to the areas where eagles are likely to be affected, at any reasonable hour, and with reasonable notice from the Service, for purposes of monitoring eagles at the site(s).

(5) The authorizations granted by permits issued under this section apply only to take that results from activities conducted in accordance with the description contained in the permit application and the terms of the permit. If the permitted activity changes after a permit is issued, you must immediately contact the Service to determine whether a permit amendment is required in order to retain take authorization.

(6) You must contact the Service immediately upon discovery of any unanticipated take.

(7) The Service may amend, suspend, or revoke a programmatic permit issued under this section if new information indicates that revised permit conditions are necessary, or that suspension or revocation is necessary, to safeguard local or regional eagle populations. This provision is in addition to the general criteria for amendment, suspension, and revocation of Federal permits set forth in §§ 13.23, 13.27, and 13.28.

(8) Notwithstanding the provisions of § 13.26 of this subchapter, you remain responsible for all outstanding monitoring requirements and mitigation measures required under the terms of the permit for take that occurs prior to cancellation, expiration, suspension, or revocation of the permit.

(9) You must promptly notify the Service of any eagle(s) found injured or

dead at the activity site, regardless of whether the injury or death resulted from your activity. The Service will determine the disposition of such eagles.

(10) The authorization granted by permits issued under this section is not valid unless you are in compliance with all Federal, tribal, State, and local laws and regulations applicable to take of eagles.

(d) *Applying for an eagle take permit.*

(1) You are advised to coordinate with the Service as early as possible for advice on whether a permit is needed and for technical assistance in assembling your permit application package. The Service may provide guidance on developing complete and adequate application materials and will determine when the application form and materials are ready for submission.

(2) Your application must consist of a completed application Form 3-200-71 and all required attachments. Send applications to the Regional Director of the Region in which the disturbance would occur—Attention: Migratory Bird Permit Office. You can find the current addresses for the Regional Directors in §2.2 of subchapter A of this chapter.

(e) *Evaluation of applications.* In determining whether to issue a permit, we will evaluate:

(1) Whether take is likely to occur based on the magnitude and nature of the impacts of the activity, which include indirect effects. For potential take in the form of disturbance, this evaluation would include:

(i) The prior exposure and tolerance to similar activity of eagles in the vicinity;

(ii) Visibility of the activity from the eagle's nest, roost, or foraging perches; and

(iii) Whether alternative suitable eagle nesting, roosting, and/or feeding areas that would not be detrimentally affected by the activity are available to the eagles potentially affected by the activity.

(2) Whether the take is:

(i) Compatible with the preservation of the bald eagle and the golden eagle, including consideration of indirect effects and the cumulative effects of other permitted take and other additional factors affecting eagle populations;

(ii) Associated with the permanent loss of an important eagle use area;

(iii) Necessary to protect a legitimate interest in a particular locality; and

(iv) Associated with, but not the purpose of, the activity.

(3) Whether the applicant has proposed avoidance and minimization measures to reduce the take to the maximum degree practicable, and for programmatic authorizations, the take is unavoidable despite application of advanced conservation practices developed in coordination with the Service.

(4) Whether issuing the permit would preclude the Service from authorizing another take necessary to protect an interest of higher priority, according to the following prioritization order:

(i) Safety emergencies;

(ii) Native American religious use for rites and ceremonies that require eagles be taken from the wild;

(iii) Renewal of programmatic take permits;

(iv) Non-emergency activities necessary to ensure public health and safety; and

(v) Other interests.

(5) Any additional factors that may be relevant to our decision whether to issue the permit, including, but not limited to, the cultural significance of a local eagle population.

(f) *Required determinations.* Before we issue a permit, we must find that:

(1) The direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations, are compatible with the preservation of bald eagles and golden eagles;

(2) The taking is necessary to protect a legitimate interest in a particular locality;

(3) The taking is associated with, but not the purpose of, the activity;

(4) The taking cannot practicably be avoided; or for programmatic authorizations, the take is unavoidable;

(5) The applicant has avoided and minimized impacts to eagles to the extent practicable, and for programmatic authorizations, the taking will occur despite application of advanced conservation practices; and

(6) Issuance of the permit will not preclude issuance of another permit necessary to protect an interest of higher priority as set forth in paragraph (e)(4) of this section.

(g) We may deny issuance of a permit if we determine that take is not likely to occur.

(h) *Permit duration.* The duration of each permit issued under this section will be designated on its face, and will be based on the duration of the proposed activities, the period of time for which take will occur, the level of impacts to eagles, and mitigation measures, but will not exceed 5 years.

**§ 22.27 Removal of eagle nests.**

(a) *Purpose and scope.*

(1) A permit may be issued under this section to authorize removal or relocation of:

(i) An active or inactive nest where necessary to alleviate a safety emergency;

(ii) An inactive eagle nest when the removal is necessary to ensure public health and safety;

(iii) An inactive nest that is built on a human-engineered structure and creates a functional hazard that renders the structure inoperable for its intended use; or

(iv) An inactive nest, provided the take is necessary to protect an interest in a particular locality and the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a clear and substantial benefit to eagles.

(2) Where practicable and biologically warranted, the permit may require a nest to be relocated, or a substitute nest provided, in a suitable site within the same territory to provide a viable nesting option for eagles within that territory, unless such relocation would create a threat to safety. However, we may issue permits to remove nests that we determine cannot or should not be relocated. The permit may authorize take of eggs or nestlings if present. The permit may also authorize the take of adult eagles (e.g., disturbance or capture) associated with the removal or relocation of the nest.

(3) A programmatic permit may be issued under this section to cover multiple nest takes over a period of up to 5 years, provided the permittee complies with comprehensive measures that are developed in coordination with the Service, designed to reduce take to the maximum degree technically achievable, and specified as conditions of the permit.

(4) This permit does not authorize intentional, lethal take of eagles.

(b) *Conditions.*

(1) Except for take that is necessary to alleviate an immediate threat to human or eagle safety, only inactive eagle nests may be taken under this permit.

(2) When an active nest must be removed under this permit, any take of nestlings or eggs must be conducted by a Service-approved, qualified, and permitted agent, and all nestlings and viable eggs must be immediately transported to foster/recipient nests or a rehabilitation facility permitted to care for eagles, as directed by the Service.

(3) Possession of the nest for any purpose other than removal or relocation is prohibited without a separate permit issued under this part authorizing such possession.

(4) You must submit a report consisting of a summary of the activities conducted under the permit to the Service within 30 days after the

permitted take occurs, except that for programmatic permits, you must report each nest removal within 10 days after the take and submit an annual report by January 31 containing all the information required in Form 3-202-16 for activities conducted during the preceding calendar year.

(5) You may be required to monitor the area and report whether eagles attempt to build or occupy another nest at another site in the vicinity for the duration specified in the permit.

(6) You may be required under the terms of the permit to harass eagles from the area following the nest removal when the Service determines it is necessary to prevent eagles from re-nesting in the vicinity.

(7) You must comply with all avoidance, minimization, or other mitigation measures determined by the Director as reasonable and specified in the terms of your permit to compensate for the detrimental effects, including indirect effects, of the permitted activity on—and for permits issued under paragraph (a)(1)(iv) of this section, to provide a net benefit to—the regional eagle population.

(8) The Service may amend or revoke a programmatic permit issued under this section if new information indicates that revised permit conditions are necessary, or that suspension or revocation is necessary, to safeguard local or regional eagle populations.

(9) Notwithstanding the provisions of §13.26 of this subchapter, you remain responsible for all outstanding monitoring requirements and mitigation measures required under the terms of the permit for take that occurs prior to cancellation, expiration, suspension, or revocation of the permit.

(10) The authorization granted by permits issued under this section is not valid unless you are in compliance with all Federal, tribal, State, and local laws and regulations applicable to take of eagles.

(c) *Applying for a permit to take eagle nests.*

(1) If the take is necessary to address an immediate threat to human or eagle safety, contact your local U.S. Fish and Wildlife Service Regional Migratory Bird Permit Office (*http://www.fws.gov/permits/mbpermits/addresses.html*) at the earliest possible opportunity to inform the Service of the emergency.

(2) Your application must consist of a completed application Form 3-200-72 and all required attachments. Send applications to the Regional Director of the Region in which the disturbance would occur—Attention: Migratory Bird Permit Office. You can find the current addresses for the Regional Directors in §2.2 of subchapter A of this chapter.

(d) *Evaluation of applications.* In determining whether to issue a permit, we will evaluate:

(1) Whether the activity meets the requirements of paragraph (a)(1) of this section;

(2) The direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations;

(3) Whether there is a practicable alternative to nest removal that will protect the interest to be served;

(4) Whether issuing the permit would preclude the Service from authorizing another take necessary to protect an interest of higher priority, as set forth in paragraph (e)(5) of this section;

(5) For take that is not necessary to alleviate an immediate safety emergency, whether suitable nesting and foraging habitat is available to accommodate eagles displaced by the nest removal; and

(6) Any additional factors that may be relevant to our decision whether to issue the permit, including, but not limited to, the cultural significance of a local eagle population.

(e) *Required determinations.* Before issuing a permit under this section, we must find that:

(1) The direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations, are compatible with the preservation of the bald eagle or the golden eagle;

(2) For inactive nests:

(i) The take is necessary to ensure public health and safety;

(ii) The nest is built on a human-engineered structure and creates a functional hazard that renders the structure inoperable for its intended use; or

(iii) The take is necessary to protect a legitimate interest in a particular locality, and the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a clear and substantial benefit to eagles;

(3) For active nests, the take is necessary to alleviate an immediate threat to human safety or eagles;

(4) There is no practicable alternative to nest removal that would protect the interest to be served; and

(5) Issuing the permit will not preclude the Service from authorizing another take necessary to protect an interest of higher priority, according to the following prioritization order:

(i) Safety emergencies;

(ii) Native American religious use for rites and ceremonies that require eagles be taken from the wild;

(iii) Renewal of programmatic nest-take permits;

(iv) Non-emergency activities necessary to ensure public health and safety;

(v) Resource development or recovery operations (under § 22.25, for golden eagle nests only);

(vi) Other interests.

(6) For take that is not necessary to alleviate an immediate threat to human safety or eagles, we additionally must find that suitable nesting and foraging habitat is available to the area nesting population of eagles to accommodate any eagles displaced by the nest removal.

(f) *Tenure of permits.* The tenure of any permit to take eagle nests under this section is set forth on the face of the permit and will not be longer than 5 years.

■ 9. Amend § 22.28 by revising paragraphs (a) and (b) to read as follows:

**§ 22.28 Permits for bald eagle take exempted under the Endangered Species Act.**

(a) *Purpose and scope.* This permit authorizes take of bald eagles (*Haliaeetus leucocephalus*) in compliance with the terms and conditions of a section 7 incidental take statement under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*; 50 CFR 402, Subpart B) issued prior to the effective date of 50 CFR 22.26.

(b) *Issuance criteria.* Before issuing you a permit under this section, we must find that you are in full compliance with the terms and conditions contained in the applicable ESA incidental take statement issued prior to the effective date of 50 CFR 22.26 for take of eagles, based on your certification and any other relevant information available to us, including, but not limited to, monitoring or progress reports required pursuant to your incidental take statement. The terms and conditions of the Eagle Act permit under this section, including any modified terms and conditions, must be compatible with the preservation of the bald eagle.

* * * * *

Dated: May 18, 2009.

**Will Shafroth,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E9–21589 Filed 9–10– 09; 8:45 am]

BILLING CODE 4310–55–S

Federal Register

Friday,
September 11, 2009

# Part III

# The President

## Notice of September 10, 2009—Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Federal Register
Vol. 74, No. 175
Friday, September 11, 2009

# Presidential Documents

**Title 3—**

## The President

**Notice of September 10, 2009**

## Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Consistent with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks of September 11, 2001, and the continuing and immediate threat of further attacks on the United States.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, and the powers and authorities adopted to deal with that emergency, must continue in effect beyond September 14, 2009. Therefore, I am continuing in effect for an additional year the national emergency the former President declared on September 14, 2001, with respect to the terrorist threat.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
*September 10, 2009.*

[FR Doc. E9–22119
Filed 9–10–09; 11:15 am]
Billing code 3195–W9–P

# Reader Aids

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Vol. 74, No. 175

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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)

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