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WHEN: Tuesday, November 10, 2009
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0310; Directorate Identifier 2009–NM–012–AD; Amendment 39–16073; AD 2009–23–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

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

During the Acceptance Test Procedure (ATP) of returned Inboard Flap Actuators * * * an excessive wear condition was identified regarding endplay between the flap actuator and ball screw. Excessive wear of the screw and ball nut could potentially lead to a flap system jam. * * *

* * * * *

The unsafe condition is a flap system jam, which could result in a skewed flap condition with consequent reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 14, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 14, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 6, 2009 (74 FR 15399). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During the Acceptance Test Procedure (ATP) of returned Inboard Flap Actuators [with Bombardier] Part Number (PN) 601R93101–19 [and Eaton PN 852D100–19], an excessive wear condition was identified regarding endplay between the flap actuator and ball screw. Excessive wear of the screw and ball nut could potentially lead to a flap system jam. A Temporary Revision (TR) has been made to the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM), Appendix A, ''Certification Maintenance Requirements'' (CMR) to ensure that unacceptable wear on the nut and ball screw is detected and corrected.

Revision 1 of this directive introduces a new phase-in schedule for performing a new CMR task C27–50–300–01.

The unsafe condition is a flap system jam, which could result in a skewed flap condition with consequent reduced controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Support for the NPRM

The Air Line Pilots Association, International (ALPA), supports the NPRM. Given the potential consequences of a flap system jam while in flight, ALPA agrees that all reasonable steps should be taken to avoid such an occurrence, and encourages the FAA to implement the proposal as soon as possible.

Request To Confirm an Applicable Part Number

Robert E. Briggs, a private citizen, requests that we confirm that Eaton PN 852D100–19, listed in the Bombardier CL–600–2B19 CMR, is also subject to this AD, as is the Bombardier PN 601R93101–19 specified in the NPRM.

We agree. We have confirmed that both Eaton PN 852D100–19 and Bombardier PN 601R93101–19, the inboard flap actuators, are subject to the unsafe condition addressed by this AD. Both part numbers are specified in the service information identified in the NPRM and this final rule. We have revised the Discussion section and paragraph (e) of this AD to clarify that both the Bombardier and Eaton parts are affected.

Request To Revise Compliance Time

Mr. Briggs states that the NPRM proposed an initial compliance time for the new CMR task of 500 flight hours after the effective date of the AD, while the CMR specifies an initial compliance time of 2,000 flight cycles from November 7, 2007. Mr. Briggs asks why there is a difference with flight hours and flight cycles, and asserts that it would be easier to track and less confusing if they were the same.

From this comment, we infer that Mr. Briggs is requesting that we revise the proposed compliance time specified in paragraph (f) of the NPRM. We do not agree. Transport Canada Civil Aviation (TCCA), in its Airworthiness Directive (AD) CF–2008–33R1, dated January 9, 2009 (referenced in the NPRM as the MCAI), gave an additional 500 flight hours (not cycles) as a grace period only to avoid grounding airplanes that have already reached the initial compliance time, but that have not yet done the initial functional check introduced in Bombardier Temporary Revision 2A–41, dated November 7, 2007. Operators that have done the initial functional check before the effective date of the AD are required to comply with the CMR schedule. We concur with TCCA's decision to include the additional time for those airplanes to comply with this AD; therefore, we have not changed the AD in this regard.

Request To Withdraw the NPRM

Air Wisconsin Airlines Corporation (Air Wisconsin) states that an AD is redundant in this case because the applicable CMR is already mandatory, and an AD puts the two documents in conflict.

From this comment, we infer that Air Wisconsin is requesting that we withdraw the NPRM. We do not agree. The FAA issues an AD on a specific product when we find that an unsafe condition exists in the product and the condition is likely to exist or develop in other products of the same type design. In this case, we have identified an unsafe condition of excessive wear of the ball screw and ball nut of certain inboard flap actuators. This AD introduces a new phase-in schedule for performing a new CMR task (inspecting the ball screw and ball nut) to correct that unsafe condition. If a conflict arises between an AD and the specified service information, the AD must be followed. We have not changed the AD in this regard.

Explanation of Change to the Unsafe Condition

We have revised the unsafe condition statement throughout this AD to expand on the possible end-level effect of a flap system jam.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 668 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $160,320, or $240 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–23–02 Bombardier, Inc. (Formerly Canadair): Amendment 39–16073. Docket No. FAA–2009–0310; Directorate Identifier 2009–NM–012–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, all serial numbers, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During the Acceptance Test Procedure (ATP) of returned Inboard Flap Actuators [with Bombardier] Part Number (PN) 601R93101–19 [and Eaton PN 852D100–19], an excessive wear condition was identified regarding endplay between the flap actuator and ball screw. Excessive wear of the screw

and ball nut could potentially lead to a flap system jam. A Temporary Revision (TR) has been made to the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM), Appendix A, ''Certification Maintenance Requirements'' (CMR) to ensure that unacceptable wear on the nut and ball screw is detected and corrected.

Revision 1 of this directive introduces a new phase-in schedule for performing a new CMR task C27–50–300–01.

The unsafe condition is a flap system jam, which could result in a skewed flap condition with consequent reduced controllability of the airplane.

Actions and Compliance

(f) Unless already done, within 30 days after the effective date of this AD, revise the Airworthiness Requirements Section of the Bombardier CL–600–2B19 MRM to include the information in Bombardier TR 2A–41, dated November 7, 2007, to Appendix A of the Airworthiness Requirements, Part 2, of the Bombardier CL–600–2B19 MRM. The initial compliance with the new CMR task must be done within 500 flight hours after the effective date of this AD.

Note 2: The actions required by paragraph (f) of this AD may be done by inserting a copy of Bombardier TR 2A–41, dated November 7, 2007, to Appendix A of the Airworthiness Requirements, Part 2, of the Bombardier CL–600–2B19 MRM. When this TR has been included in general revisions of the MRM, the TR may be removed from the MRM, provided the relevant information in the general revision is identical to that in Bombardier TR 2A–41, dated November 7, 2007.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2008–33R1, dated January 9, 2009; and Bombardier TR 2A–41, dated November 7, 2007, to Appendix A of the Airworthiness Requirements, Part 2, of the Bombardier CL–600–2B19 MRM; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Temporary Revision 2A–41, dated November 7, 2007, to Appendix A of the Airworthiness Requirements, Part 2, of the Bombardier CL–600–2B19 Maintenance Requirements Manual, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 19, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26296 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0699 Directorate Identifier 2009–CE–042–AD; Amendment 39–16047; AD 2009–21–08]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

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

Some cases of uncommanded steering action were observed, while the steering system was switched off. A leakage in the Steering Select/Bypass Valve, installed in the Steering Manifold, when closed, is suspected to have caused the uncommanded steering.

If left uncorrected, this condition could lead to a potentially dangerous veer along the runway; in fact, according to the Aircraft Flight Manual limitations, the steering system must be in 'off' position during landing and takeoff (in this case when airspeed is higher than 60 knots).

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 14, 2009.

On December 14, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 5, 2009 (74 FR 38991). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Some cases of uncommanded steering action were observed, while the steering system was switched off. A leakage in the Steering Select/Bypass Valve, installed in the Steering Manifold, when closed, is suspected to have caused the uncommanded steering.
>
> If left uncorrected, this condition could lead to a potentially dangerous veer along the runway; in fact, according to the Aircraft Flight Manual limitations, the steering system must be in 'off' position during landing and takeoff (in this case when airspeed is higher than 60 knots). For the reasons stated above, this new AD mandates repetitive inspections for leakage of the Nose Landing Gear steering manifold.

The MCAI requires, if any inspection finds leakage of the steering manifold, the replacement of the steering manifold.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received.

Mr. Carlo Cardu, Piaggio Aero Industries, states that revisions of airplane maintenance manuals (AMM) will be issued. He suggests that the final AD action include a statement that later revisions of AMM is acceptable for compliance with the requirements of the AD.

The FAA does not agree with including the phrase ''or later revision'' after the referenced service information. The FAA cannot approve and legally reference documents that currently do not exist. When these documents are completed and approved, the FAA can issue an alternative method of compliance if the FAA determines that the incorporation of the procedures provides an acceptable level of safety to the unsafe condition specified in the AD.

We are not changing the final rule AD action as a result of this comment.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 63 products of U.S. registry. We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $40,320 or $640 per product.

In addition, we estimate that any necessary follow-on actions will take about 16 work-hours and require parts costing $0, for a cost of $1,280 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–21–08 PIAGGIO AERO INDUSTRIES S.p.A.: Amendment 39–16047; Docket No. FAA–2009–0699; Directorate Identifier 2009–CE–042–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model P–180 airplanes, all serial numbers (S/N), certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Some cases of uncommanded steering action were observed, while the steering system was switched off. A leakage in the Steering Select/Bypass Valve, installed in the Steering Manifold, when closed, is suspected to have caused the uncommanded steering.

If left uncorrected, this condition could lead to a potentially dangerous veer along the runway; in fact, according to the Aircraft Flight Manual limitations, the steering system must be in ''off'' position during landing and takeoff (in this case when airspeed is higher than 60 knots). For the reasons stated above, this new AD mandates repetitive inspections for leakage of the Nose Landing Gear steering manifold.

The MCAI requires, if any inspection finds leakage of the steering manifold, the replacement of the steering manifold.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 6 months after December 14, 2009 (the effective date of this AD) or within the next 100 hours time-in-service (TIS) after December 14, 2009 (the effective date of this AD), whichever occurs first, and repetitively thereafter at intervals not to exceed every 165 hours TIS, do a functional test of the nose landing gear (NLG) steering manifold. Follow the accomplishment instructions of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249 (includes CONFIRMATION SLIP), Rev. 1, dated May 27, 2009.

(2) Upon installation of a NLG steering manifold on any airplane, do a functional test of the NLG steering manifold. Repetitively thereafter at intervals not to exceed every 165 hours TIS, do a functional test of the NLG steering manifold. Follow the accomplishment instructions of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249 (includes CONFIRMATION SLIP), Rev. 1, dated May 27, 2009.

(3) If during any inspection required in paragraphs (f)(1) and (f)(2) of this AD movement of a NLG steering manifold is found, using the compliance times in the accomplishment instructions of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249 (includes CONFIRMATION SLIP), Rev. 1, dated May 27, 2009, replace the NLG steering manifold following (for S/N 1004 through 1104) pages 1 through 8 dated March 1, 2006; 201, 202, 204, and 206 through 216, dated June 16, 2008; 203 and 205, dated March 1, 2006; and 501 through 506, dated March 1, 2006, of PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00, Revision No. D2, revised June 16, 2008; or (for S/N 1105 and greater) pages 1 through 8, dated June 30, 2005; 201, 202, and 207 through 209, dated December 19, 2008; 203 and 205, dated June 30, 2005; 204, 206, and 210 through 216, dated September 14, 2007; and 501 through 506, dated June 30, 2005, of PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00, Revision No. A3, revised December 19, 2008.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA AD 2009–0129, dated June 19, 2009; PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249 (includes CONFIRMATION SLIP), Rev. 1, dated May 27, 2009; PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00, revised June 16, 2008, pages 1 through 8, 201 through 216, and 501 through 506; and PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00, revised December 19, 2008, pages 1 through 8, 201 through 216, and 501 through 506, for related information.

Material Incorporated by Reference

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

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

(2) For service information identified in this AD, contact Piaggio Aero Industries S.p.a., Via Cibrario, 4–16154 Genoa, Italy; telephone +39 010 06481 741; fax: +39 010 6481 309; Internet: *http://www.piaggioaero.com,* or e-mail: *MMicheli@piaggioaero.it.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Service information title	Page(s)	Revision	Date
PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249.	1 through 9	Rev. 1	May 27, 2009.
PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249.	CONFIRMATION SLIP	Rev. 1	Not Dated.
PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	Cover	No. D2	Revised June 16, 2008.
PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	1 through 8	Not Applicable	March 1, 2006.
PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	201, 202, 204, and 206 through 216.	Not Applicable	June 16, 2008.
PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	203 and 205	Not Applicable	March 1, 2006.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE—Continued

Service information title	Page(s)	Revision	Date
PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	501 through 506	Not Applicable	March 1, 2006.
PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	Cover	No. A3	Revised December 19, 2008.
PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	1 through 8	Not Applicable	June 30, 2005.
PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	201, 202, and 207 through 209.	Not Applicable	December 19, 2008.
PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	203 and 205	Not Applicable	June 30, 2005.
PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	204, 206, and 210 through 216.	Not Applicable	September 14, 2007.
PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	501 through 506	Not Applicable	June 30, 2005.

Issued in Kansas City, Missouri, on October 7, 2009.

Scott A. Horn,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–24651 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1026; Directorate Identifier 2009–NM–197–AD; Amendment 39–16084; AD 2009–23–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to all Boeing Model 737–300, –400, and –500 series airplanes. The existing AD currently requires inspecting to determine if certain carriage spindles are installed, repetitive inspections for corrosion and indications of corrosion on affected carriage spindles, and if necessary, related investigative and corrective actions. The existing AD also provides optional terminating action. For certain airplanes, this new AD would reinstate the requirements of the existing AD. This AD results from the exclusion of certain carriage spindles from the requirements of the existing AD, and additional reports of corrosion found on carriage spindles that are located on the outboard trailing edge flaps. We are issuing this AD to detect and correct corrosion of the carriage spindle, which could result in fracture. Fracture of both the inboard and outboard carriage spindles, in the forward ends through the large diameters, on a flap, could adversely affect the airplane's continued safe flight and landing.

DATES: This AD becomes effective November 24, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 24, 2009.

On August 5, 2008 (73 FR 42259, July 21, 2008), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD.

We must receive any comments on this AD by December 24, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On July 10, 2008, we issued AD 2008–15–05, amendment 39–15617 (73 FR 42259, July 21, 2008). That AD applies to all Boeing Model 737–300, –400, and –500 series airplanes. That AD requires inspecting to determine if certain carriage spindles are installed, repetitive inspections for corrosion and indications of corrosion on affected carriage spindles, and if necessary,

related investigative action and corrective action. That AD also provides optional terminating action. That AD resulted from a report of corrosion found on carriage spindles that are located on the outboard trailing edge flaps. The actions specified in that AD are intended to detect and correct corrosion of the carriage spindle, which could result in fracture. Fracture of both the inboard and outboard carriage spindles, in the forward ends through the large diameters, on a flap, could adversely affect the airplane's continued safe flight and landing.

Actions Since Existing AD Was Issued

Since we issued AD 2008–15–05, we approved an alternative method of compliance (AMOC), dated December 8, 2008, to exclude certain carriage spindle serial numbers from the inspection requirements. This approval was given based on information received from Boeing indicating that only one supplier of the carriage spindles produced discrepant coatings, and that the carriages produced by the second supplier did not have this unsafe condition.

Subsequent to the AMOC approval, we were advised that the carriages produced by the second supplier may have been incorrectly finished, leading to over-grinding of the high velocity oxy-fuel (HVOF) coating on the spindle. The over-grinding of the HVOF coating leads to exposure of the base metal, which is susceptible to corrosion. We also received additional reports of corrosion found on the carriage spindles that were excluded from the inspection requirements in the existing AD. Investigation of those carriage spindles revealed that discrepant surface finishing of the HVOF coating during the production process had exposed the base metal. The exposed base metal is susceptible to corrosion.

Subsequently, we have determined that it is necessary to reinstate the inspections of certain carriage spindles because those spindles are subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Service Bulletin 737–57A1304, Revision 1, dated August 11, 2009. (We referred to Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008, as the appropriate source of service information for accomplishing the required actions of AD 2008–15–05.) The actions specified in Revision 1 are essentially identical to those in Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008. Revision 1 references the effect of the AMOC letter discussed previously and adds a new table (Table 3) to reflect certain serial numbers that also are subject to the unsafe condition, but were excluded from the inspection requirements under the AMOC discussed previously.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to supersede AD 2008–15–05. This new AD retains certain requirements of the existing AD. This AD would also require accomplishing the actions specified in the Relevant Service Information described previously.

Interim Action

We consider this AD interim action. We are currently considering requiring replacement of all HVOF-coated carriage spindles, which will constitute terminating action for the repetitive inspections required by this AD. However, the planned compliance time for the replacement would allow enough time to provide notice and opportunity for prior public comment on the merits of the replacement.

Change to Existing AD

This AD would retain certain requirements of AD 2008–15–05; however, the inspection report required by paragraph (h) of the existing AD is not required by this AD.

Since AD 2008–15–05 was issued, a new paragraph (d) was added to provide the Air Transport Association (ATA) of America subject code. This code was added to make this AD parallel with other new AD actions.

Since AD 2008–15–05 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2008–15–05	Corresponding requirement in this AD
paragraph (d)	paragraph (e).
paragraph (e)	paragraph (f).
paragraph (f)	paragraph (g).
paragraph (g)	paragraph (h).
paragraph (i)	paragraph (j).
paragraph (j)	paragraph (k).

FAA's Justification and Determination of the Effective Date

We received additional reports of corrosion found on carriage spindles that are located on the outboard trailing edge flaps and were removed from the inspection requirements in the existing AD. Investigation of those carriage spindles revealed that discrepant surface finishing of the HVOF coating done during the production process had exposed the base metal. The exposed base metal is susceptible to corrosion. Corrosion occurring on the exposed base metal can quickly lead to cracking and full fracture of the carriage spindle. Fracture of both the inboard and outboard carriage spindles, in the forward ends through the large diameters, on a single flap, could adversely affect the airplane's continued safe flight and landing. Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to assure the structural integrity of the carriage spindle and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1026; Directorate Identifier 2009–NM–197–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–15617 (73 FR 42259, July 21, 2008) and adding the following new AD:

2009–23–10 Boeing: Docket No. FAA–2009–1026; Directorate Identifier 2009–NM–197–AD; Amendment 39–16084.

Effective Date

(a) This AD becomes effective November 24, 2009.

Affected ADs

(b) This AD supersedes AD 2008–15–05, Amendment 39–15617.

Applicability

(c) This AD applies to all Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD results from the exclusion of certain carriage spindles from the requirements of the existing AD, and additional reports of corrosion found on carriage spindles that are located on the outboard trailing edge flaps. The Federal Aviation Administration is issuing this AD to detect and correct corrosion of the carriage spindle, which could result in fracture. Fracture of both the inboard and outboard carriage spindles, in the forward ends through the large diameters, on a flap, could adversely affect the airplane's continued safe flight and landing.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2008–15–05, With New Service Information

Inspection To Determine Affected Carriage Spindle

(g) For all airplanes: Within 30 days after August 5, 2008 (the effective date of AD 2008–15–05), inspect the carriage sub-assembly to determine whether an affected carriage spindle with a high velocity oxy-fuel (HVOF) thermal coating is installed, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and/or serial number of the carriage can be conclusively determined from that review. If no affected carriage spindle is installed, no further action is required by this paragraph.

Repetitive Inspections, Related Investigative Actions, and Corrective Action

(h) For airplanes on which any affected carriage spindle was determined to be installed in accordance with Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008, as of the effective date of this AD; and the spindle is identified in Table 2 of Boeing Service Bulletin 737–57A1304, Revision 1, dated August 11, 2009: At the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD, do a detailed inspection (or, as an option for the forward end of the spindle only, a borescope inspection technique may be used) of the spindle for corrosion and potential indications of corrosion of the carriage spindle, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008; or Boeing Service Bulletin 737–57A1304, Revision 1, dated August 11, 2009. Do all applicable related investigative and corrective actions before further flight. Repeat the detailed inspection (or, as an option for the forward end of the spindle only, the borescope inspection) and certain related investigative actions (i.e., the gap-check or optional non-destructive test (NDT) ultrasonic inspection) at the applicable compliance times specified in paragraph 1.E. of Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008; or Boeing Service Bulletin 737–57A1304, Revision 1, dated August 11, 2009.

(1) Within 30 days after August 5, 2008.

(2) Within 90 days after the installation of a new HVOF-coated spindle.

Note 1: Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008; and Boeing Service Bulletin 737–57A1304, Revision 1, dated August 11, 2009; reference Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003; for further guidance on accomplishing the related investigative actions.

New Requirements of This AD

Repetitive Inspections, Related Investigative Actions, and Corrective Action for Certain Airplanes

(i) For airplanes on which a carriage spindle having a serial number identified in Table 3 of Appendix A of Boeing Service Bulletin 737–57A1304, Revision 1, dated August 11, 2009, is installed: At the latest of the times specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, as applicable, do a detailed inspection (or, as an option for the forward end of the spindle only, a borescope inspection technique may be used) of the spindle for corrosion and potential indications of corrosion of the carriage spindle, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–57A1304, Revision 1, dated August 11, 2009. Do all applicable related investigative and corrective actions before further flight. Repeat the detailed inspection (or, as an option for the forward end of the spindle only, the borescope inspection) and related investigative actions (*i.e.,* the gap-check or optional NDT ultrasonic inspection) at the applicable compliance times specified in paragraph 1.E. of Boeing Service Bulletin 737–57A1304, Revision 1, dated August 11, 2009.

(1) Within 30 days after the effective date of this AD.

(2) Within 90 days after the installation of a new HVOF-coated spindle identified in Table 3 of Appendix A of Boeing Service Bulletin 737–57A1304, Revision 1, dated August 11, 2009.

(3) Within 90 days after doing an inspection in accordance with Boeing Alert

Service Bulletin 737–57A1304, dated June 2, 2008.

Optional Terminating Action

(j) Replacement of an HVOF-coated carriage spindle with a non-HVOF coated carriage spindle, or with a serviceable HVOF-coated carriage spindle with an 'R' suffix on the serial number, in accordance with Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008; or Boeing Service Bulletin 737–57A1304, Revision 1, dated August 11, 2009; terminates the requirements of this AD for that carriage spindle only.

Parts Installation

(k) As of August 5, 2008, an HVOF-coated spindle without an 'R' suffix on the serial number may be installed on an airplane provided the actions required by paragraph (h) or (i) of this AD, as applicable, are done on that spindle.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590. Or, e-mail information to *9–ANM–Seattle–ACO–AMOC–Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(4) AMOCs approved previously in accordance with AD 2008–15–05, are not approved as AMOCs for this AD.

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008; and Boeing Service Bulletin 737–57A1304, Revision 1, dated August 11, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 737–57A1304, Revision 1, dated August 11, 2009, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Alert Service Bulletin 737–57A1304, dated June 2, 2008, on August 5, 2008 (73 FR 42259, July 21, 2008).

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on October 26, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26581 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0165; Directorate Identifier 2008–CE–055–AD; Amendment 39–16075; AD 2009–23–03]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation (Type Certificate Previously Held by Raytheon Aircraft Company) Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to supersede AD 2006–24–11, which applies to certain Hawker Beechcraft Corporation (HBC) (Type Certificate previously held by Raytheon Aircraft Company) Models 1900, 1900C, and 1900D airplanes. AD 2006–24–11 currently requires you to repetitively inspect the forward, vertical, and aft flanges of both the left and right wing rear spar lower caps for cracks, repair any cracks found, and report the inspection results to the manufacturer. Since we issued AD 2006–24–11, the manufacturer has developed a modification kit to install on the wing rear spar lower caps that will terminate the 200-hour repetitive inspection required in AD 2006–24–11. Consequently, this AD requires installing the new modification kits on the wing rear spar lower caps and terminates the repetitive inspections required in AD 2006–24–11 when the kits are installed. We are issuing this AD to prevent fatigue cracks in the wing rear spar lower caps, which could result in fatigue failure of the wing rear spar lower caps. A rear spar failure could result in complete wing failure and the wing separating from the airplane.

DATES: This AD becomes effective on December 14, 2009.

On December 14, 2009, the Director of the Federal Register approved the incorporation by reference of Hawker Beechcraft Mandatory Service Bulletin 57–3816, Issued: January 2008, listed in this AD.

As of December 11, 2006 (71 FR 70297, December 4, 2006), the Director of the Federal Register approved the incorporation by reference of Raytheon Mandatory Service Bulletin 57–3815, dated Issued: October 2006, listed in this AD.

ADDRESSES: To get the service information identified in this AD, contact Hawker Beechcraft Corporation, Attn: Airline Technical Support, P.O. Box 85, Wichita, Kansas 67201; telephone: (800) 429–5372; fax: (316) 676–8745; Internet: *http://www.hawkerbeechcraft.com*.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2009–0165; Directorate Identifier 2008–CE–055–AD.

FOR FURTHER INFORMATION CONTACT: Steve Potter, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4124; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On February 19, 2009, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain HBC Models 1900, 1900C, and 1900D airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 27, 2009 (74 FR 8885). The NPRM proposed to supersede AD 2006–24–11 with a new AD that would require you to install modification kits on the wing rear spar lower caps. The

proposed AD would also retain the repetitive inspections currently required in AD 2006–24–11 until the modification kits are installed. The proposed AD would require you to use Raytheon Mandatory Service Bulletin 57–3815, Issued: October 2006; and Hawker Beechcraft Mandatory Service Bulletin SB 57–3816, Issued: January, 2008, to perform these actions.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue: Address Shoring Requirement

Mr. Scott Robert Lewis states that the shoring procedures specified in step 5 of Hawker Beechcraft Mandatory Service Bulletin SB 57–3816, Issued: January 2008, are inadequate and no reference is given.

Mr. Lewis also states that the maintenance manual gives no procedures for shoring the aircraft. Trusses must be made and the aircraft should be supported using approved procedures provided by the manufacturer.

Mr. Lewis requests references to procedures for the shoring process.

We agree with the commenter that there are no specific shoring procedures given to accomplish Hawker Beechcraft Mandatory Service Bulletin SB 57–3816, Issued: January 2008.

We rely on maintenance facilities to use best practices to shore airplanes at the locations specified in the modification kit installation instructions.

For further assistance with procedures for shoring an airplane, you may contact the manufacturer as noted in the Accomplishment Instructions of Hawker Beechcraft Mandatory Service Bulletin SB 57–3816, Issued: January 2008.

We are changing the final rule AD action based on this comment.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD will affect 243 airplanes in the U.S. registry and will reduce costs by $12.8 million because the costs of the repetitive inspections currently required by AD 2006–24–11 will exceed the required modification costs over the life of the affected airplanes.

We estimate the following direct costs (the sum of labor and parts costs) to do the inspections:

Labor cost	Parts cost	Total direct cost per airplane	Total direct cost on U.S. operators
10 work-hours × $80 per hour = $800	$20	$820	$199,260

We estimate the following direct costs to do the modification:

Labor cost	Parts cost	Total direct cost per airplane	Total direct cost on U.S. operators
250 work-hours × $80 per hour = $20,000	$2,200	$22,200	$5,394,600

Given an average usage rate of 1,571 hours time-in-service, AD 2006–24–11 requires approximately 7.9 inspections a year. The approximate annual cost of these repetitive inspections is $6,500. Based on these figures, a cost savings from incorporating the modification instead of doing the repetitive inspections will occur after 5 years on average. That is, the cost savings on the repetitive inspections no longer required will be greater than or equal to the total cost of the modification.

The results of our cost analysis are summarized in the table below. (See docket for full analysis.)

	Amount per airplane	Total—U.S. operators
Direct Costs (the sum of labor and parts)	* $22,200	* $5,394,600
Out-of-Service Costs (average)	* 1,796	* 436,510
Total Costs	* 23,996	* 5,831,110
Cost savings over the life of the airplane on AD 2006–24–11 repetitive inspections that would no longer be required after modification	** 76,638	** 18,622,984
Net Cost Savings	52,641	12,791,873

* Per airplane costs are shown rounded to the nearest dollar. Consequently, the corresponding totals for all U.S. operators may differ slightly from the per airplane costs multiplied by the total number of airplanes.

** Cost savings over the life of the airplane are calculated as follows. For each affected airplane, we use the airplane's estimated usage rate to estimate the number of inspections a year and multiply that figure by $820 to estimate inspection cost a year. (As noted above, such estimates average to 7.9 inspections a year and about $6,500 in annual inspection costs.) We then calculate a 7 percent annuity factor for the number of years of the airplane's life remaining to a presumed retirement age of 40. In calculation of the annuity factor, we assume annual inspection costs are discounted at mid-year. The present value of the inspection costs can then be calculated as the annual inspection cost multiplied by the years-to-40 annuity factor.

Notes: This analysis assumed January 1, 2009, as the effective date of the AD and discount cost savings to that date. Updating to January 1, 2010, to be closer to the actual effective date will have little effect on the results. Costs are undiscounted, as we assume compliance as soon as the AD becomes effective.

These results are based on the assumption that the life-span of the airplanes affected by this AD is 40 years. This assumption is not crucial to the cost-beneficial nature of the rule, since 95 percent of the affected airplanes achieve cost savings on or before age 30.

Authority for This Rulemaking

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

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

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.

To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The FAA did make such a determination for this AD. The basis for this determination is now discussed.

This AD will supersede existing AD 2006–24–11. The cost analysis for this AD shows that the modification will have a cost savings from the accumulative repetitive inspection cost now required in AD 2006–24–11, reflecting cost savings for 241 of the 243 affected airplanes. For the two firms that own the two airplanes where the analysis did not show a cost savings, we have identified one as a subsidiary of General Electric Capital Corporation and the other as the subsidiary of a firm that is probably large. General Electric Capital Corporation is not a small entity. We were unable to determine the size classification of the other firm. Even if the corporate parent of the unidentified firm is a small firm, this AD will impact at most one firm, and one firm is not a substantial number.

Therefore, the Acting FAA Administrator certifies that this rule will not impose a significant economic impact on a substantial number of small entities.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2009–0165; Directorate Identifier 2008–CE–055–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–24–11, Amendment 39–14840 (71 FR 70297, December 4, 2006), and adding the following new AD:

2009–23–03 Hawker Beechcraft Corporation (Type Certificate previously held by Raytheon Aircraft Company): Amendment 39–16075; Docket No. FAA–2009–0165; Directorate Identifier 2008–CE–055–AD.

Effective Date

(a) This AD becomes effective on December 14, 2009.

Affected ADs

(b) This AD supersedes AD 2006–24–11, Amendment 39–14840. AD 2006–18–51 relates to the subject of this AD.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

	Serial numbers
Group 1 Model Airplanes	
(1) 1900	UA–3.
(2) 1900C	UB–1 through UB–74.
Group 2 Model Airplanes	
(1) 1900C (C–12J)	UC–1 through UC–174, and UD–1 through UD–6.
(2) 1900D	UE–1 through UE–439.

Unsafe Condition

(d) This AD results from the manufacturer developing a modification kit to install on the wing rear spar lower caps that will terminate the 200-hour repetitive inspection required in AD 2006–24–11. We are issuing this AD to prevent fatigue cracks in the wing rear spar lower caps, which could result in fatigue failure of the wing rear spar lower caps. A rear spar failure could result in complete wing failure and the wing separating from the airplane.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) For Group 1 and Group 2 airplanes: Repetitively inspect both the left and right wing rear spar lower caps for cracks and other damage, such as loose or missing fasteners.	Repetitively inspect at intervals not to exceed 200 hours time-in-service (TIS) after the last inspection required by AD 2006–24–11.	Follow the procedures in Raytheon Mandatory Service Bulletin 57–3815, Issued: October 2006.
(2) For Group 1 and Group 2 airplanes: If cracks are found, repair all cracks by obtaining and incorporating an FAA-approved repair scheme from the manufacturer.	Before further flight after any inspection required by paragraph (e)(1) of this AD where cracks are found.	For the repair scheme, contact Hawker Beechcraft Corporation at P.O. Box 85, Wichita, Kansas 67201–0085; phone: (800) 429–5372; fax: (316) 676–8745; e-mail: *tom_peay@rac.ray.com*.
(3) For Group 1 and Group 2 airplanes: Report the inspection results to Hawker Beechcraft Company (formerly Raytheon Aircraft Company) using the instructions and forms in the service bulletin. Complete all sections of the required forms. Reporting requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 2120–0056.	Report the repetitive inspection results within 30 days after the inspection.	Follow the procedures in Raytheon Mandatory Service Bulletin 57–3815, Issued: October 2006.
(4) For Group 1 airplanes: Install Modification Kit 114–4052–1 and Modification Kit 114–4067–0001.	Upon reaching 22,000 total hours TIS or within the next 3 years after December 14, 2009 (the effective date of this AD), whichever occurs later. Installing the modification kits terminates the repetitive inspections required by paragraph (e)(1) of this AD.	Follow the procedures in Hawker Beechcraft Mandatory Service Bulletin SB 57–3816, Issued: January 2008. For further assistance with procedures for shoring an airplane, you may contact the manufacturer at the address specified in paragraph (h)(3) of this AD.
(5) For Group 2 airplanes: Install Modification Kit 118–4012–1 or 118–4012–3 and Modification Kit 118–4014–0003.	Upon reaching 22,000 total hours TIS or within the next 3 years after December 14, 2009 (the effective date of this AD), whichever occurs later. Installing the modification kits terminates the repetitive inspections required by paragraph (e)(1) of this AD.	Follow the procedures in Hawker Beechcraft Mandatory Service Bulletin SB 57–3816, Issued: January 2008. For further assistance with procedures for shoring an airplane, you may contact the manufacturer at the address specified in paragraph (h)(3) of this AD.
(6) For all affected Group 1 and Group 2 airplanes: You may install the modification kits specified in paragraphs (e)(4) and (e)(5) of this AD at any time before the required compliance times specified in paragraphs (e)(4) and (e)(5) of this AD. Installing the modification kits terminates the repetitive inspections required by paragraph (e)(1) of this AD.	As of December 14, 2009 (the effective date of this AD).	Not applicable.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Steve Potter, Aerospace Engineer, ACE–118W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209, phone: (316) 946–4124, fax: (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(g) AMOCs approved for AD 2006–24–11 are not approved for this AD.

Material Incorporated by Reference

(h) You must use Raytheon Mandatory Service Bulletin 57–3815, Issued: October 2006, and Hawker Beechcraft Mandatory Service Bulletin 57–3816, Issued: January 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Hawker Beechcraft Mandatory Service Bulletin SB 57–3816, Issued: January 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On December 11, 2006 (71 FR 70297, December 4, 2006), the Director of the Federal Register approved the incorporation by reference of Raytheon Mandatory Service Bulletin 57–3815, Issued: October 2006.

(3) For service information identified in this AD, contact Hawker Beechcraft, Attn: Airline Technical Support, P.O. Box 85, Wichita, Kansas 67201; telephone: (800) 429–5372; fax: (316) 676–8745; Internet: *http://www.hawkerbeechcraft.com*.

(4) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(5) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Kansas City, Missouri, on October 27, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26385 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28281; Directorate Identifier 2006–NM–238–AD; Amendment 39–16076; AD 2009–23–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This AD requires repetitive replacement of the internal electrical feed-through connectors of the boost pumps of the main fuel tank. This AD results from a report of cracking in the epoxy potting compound on the internal feed-through connector of the fuel boost pump in the area of the soldered wire connector lugs. We are issuing this AD to prevent a hazardous electrical path from the dry side to the wet side of the fuel boost pump through a cracked feed-through connector, or between pins or a pin and the shell on one side of the feed-through connector, which could create an ignition source on the wet side of the fuel boost pump or cause a fire in the fuel pump enclosure and lead to subsequent explosion of the fuel tank.

DATES: This AD is effective December 14, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 14, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Judy Coyle, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6497; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Boeing Model 767 airplanes. That NPRM was published in the **Federal Register** on May 25, 2007 (72 FR 29282). That NPRM proposed to require repetitive replacement of the internal electrical feed-through connectors of the boost pumps of the main fuel tank.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Support for the AD

Continental Airlines states that it has accomplished the actions required by the NPRM on all affected airplanes; we infer from this statement that Continental concurs with the content of the NPRM.

Request To Withdraw AD

Boeing suggests that we should not issue the AD, not only because the risk is not to the wet tank side, as stated in the NPRM, but also in anticipation of the fact that an AD will soon be issued to require protection of the fuel boost pumps from electrical threats through implementing a ground fault interrupter (GFI) on fuel boost pump installations. Boeing adds that affected Model 767 GFI relays have been qualified, and Boeing issued Service Bulletin 767–28A0085, dated January 10, 2008; and Revision 1, dated June 25, 2009; which include procedures for the pump relay removal and replacement.

Although we understand Boeing's concern, we do not agree to withdraw the NPRM. The installation of GFI circuit protection is a significant design improvement to prevent repetitive and prolonged arcing due to an electrical fault; however, GFI circuit protection does not eliminate the potential for an electrical fault to create an ignition source at the time the fault initially occurs. The potential ignition sources resulting from any single failure in the fuel tanks must be fully mitigated by design change or other acceptable means, *e.g.,* repetitive inspections, or life-limited parts. The implementation of GFI circuit protection provides partial mitigation for this particular design problem, and it provides at least partial mitigation for electrical failure modes that may not have been identified. However, we have determined that it is necessary to require a specific action to eliminate the ignition threat presented by this connector failure issue, in addition to eventually adding GFI circuit protection. We took a similar position on the fuel boost pump power supply conduits and fuel tank float switch conduits affecting certain other Boeing airplanes. Due to these factors, we have determined that this AD must be issued without further delay.

Requests To Change Compliance Time

ABX Air asks that the limits (compliance times) required by paragraphs (f) and (g) of the NPRM be specified in pump hours and calendar time relating to an installed pump, and not airframe hours and calendar time relating to the airframe. ABX Air states that safe operation of the fuel boost pump will be ensured by a 40,000-flight-hour pump replacement interval, and an interval of 96 months while the pump is installed on the wing. ABX Air adds that the calendar-based replacement interval is vague and could be misinterpreted; the 96-month interval could start when the feed-through connector is manufactured or installed in a pump in a repair shop, or when the pump is installed on the airplane. ABX Air notes that determining and tracking the manufacture date of the connectors would be a burdensome task for operators and would change the scope of the NPRM and necessitate issuance of a supplemental NPRM. ABX Air states that unless there is proof that the connector's epoxy develops cracks while in storage, the calendar time should include/consider the time when the pump is installed on the airplane. ABX Air adds that the intent of these actions should be clarified.

Japan Airlines (JAL) asks that we clarify the compliance time specified in the NPRM for replacement of the feed-through connector to specify that the interval is related to in-service operating time. JAL notes that it started fuel boost pump replacements during maintenance, before the referenced service information was issued. JAL adds that a maintenance records review of the pumps should be added to the compliance time to confirm previous replacement of the connector.

All Nippon Airways (ANA) asks that the compliance time specified in the

NPRM for replacement of the fuel boost pump on which the feed-through connector was replaced prior to issuance of the referenced service information be extended to 96 months or 40,000 flight hours after connector replacement.

UAL recommends that we consider the date of manufacture or total in-service hours of the pump for the compliance time in paragraphs (f) and (g) of the NPRM. UAL states that although the proposed compliance time pertains to the airplane, the FAA intention is to limit the time in service of the component feed-through connector to 96 months or 40,000 flight hours, whichever comes first. UAL adds that pumps older than 96 months or having more than 40,000 hours' time-in-service could be available; however, it is possible that airplanes having less than 96 months or 40,000 total flight hours will have these high-time pumps installed. UAL states that this will result in the pumps continuing to be used beyond the 96-month or 40,000-flight-hour compliance time recommended in the NPRM, without having the feed-through connector replaced.

We agree with the commenters. We do not have supporting data to show that deterioration of the feed-through connector leading to cracking begins at manufacture; such deterioration could result from aging of the material. We consider it more likely that the cracking is due to the changes in pump temperature that occur with each flight during normal operation, and/or vibration of the fuel boost pump during operation. However, potted connectors have a longer life in more benign operating environments. We have changed the compliance times in paragraphs (f) and (g) of this AD so that the compliance times are based on the time accrued since installation of a fuel boost pump after the feed-through connector is replaced. This can be determined through a maintenance records review or, optionally, based on the date the connector was replaced.

In addition, we have re-organized paragraph (g) of this AD and added paragraph (h) of this AD for clarity. We have revised the subsequent paragraph identifiers accordingly.

Request To Clarify Paragraph (h) of the NPRM

ABX Air asks that we revise the NPRM to clarify the parts installation information specified in paragraph (h) of the NPRM. ABX states that, to comply with paragraph (h) of the NPRM, the connector must be replaced with a new connector any time a pump is removed and reinstalled. ABX notes that a pump could be removed for maintenance action unrelated to the internal connector, and the removed pump may have had a new connector installed 10,000 flight hours prior to removal. ABX adds that to comply with the actions in paragraph (h), the pump cannot be reinstalled without replacing the internal connector with a new connector, even though the connector has not exceeded the 40,000-flight-hour limit. ABX Air suggests that the parts installation requirements in paragraph (h) be changed for clarification.

We agree that paragraph (i) of this AD (referred to as paragraph (h) in the NPRM) should be further clarified in light of the previously identified changes we made to paragraphs (f) and (g) of this AD. We have clarified the parts installation information specified in paragraph (i) accordingly.

Request To Perform Actions in Paragraph (g) of the NPRM at Different Times

JAL asks that we allow replacement of the feed-through connector in the pumps on the left and right main fuel tanks to be done at different times, and asks that an informational note be added to the NPRM to include this language. JAL provides no justification for its request.

We infer that JAL would like more flexibility in maintaining its airplanes, and we agree that replacement of the connectors in individual fuel pumps can be done separately. We have added a new Note 1 to the AD indicating that it is acceptable to replace the connectors in different pumps at different times, provided the compliance times required by paragraph (f) of this AD are met for each pump.

Request To Change Unsafe Condition

Boeing asks that we change the description of the unsafe condition in the Summary and Discussion sections of the NPRM, which read as follows:

> We are proposing this AD to prevent a hazardous electrical path from the dry side to the wet side of the fuel boost pump through a cracked feed-through connector, which could create an ignition source on the wet side of the fuel boost pump and lead to subsequent explosion of the fuel tank.

Boeing requests that we change the unsafe condition to the following:

> We are proposing this AD to address a concern with the existence of epoxy potting cracks in the dry side area of the soldered wire connector lugs on the feed-through connector. Cracked epoxy on the feed-through connector can create an area for conductive debris to accumulate that could lead to an ignition source in the Flammable Leakage Zone (FLZ) which is the dry site of the pump installation.

Boeing states that the change to the description of the unsafe condition would align the description with that contained in Boeing Alert Service Bulletins 767–28A0095 and 767–28A0096, for consistency. Boeing adds that the failure does not propagate to the wet side of the pump, and the wet side is designed to contain ignition sources.

We partially agree with the commenter. We agree that clarification of the unsafe condition is appropriate because a fire external to the fuel boost pump enclosure is also a concern, and may be the more likely failure scenario. We disagree that external fire is the only risk associated with this design problem. Cracking of the connector potting material can eventually lead to corrosion, or a collection of contaminants that creates a conductive path between the wet and dry sides of the pump connector. If the fuel boost pump is operated under dry conditions, such as a forward boost pump during a go-around condition, or during defueling on the ground, an ignition source could occur inside the pump, resulting in ignition of fuel tank vapor. In addition, a leak of the connector due to cracking, combined with an ignition source due to a conductive path, could lead to a fire in the aluminum pump housing. A fire could cause an ignition source due to burn-through or a hot spot on the housing or the wiring conduit. We have changed the description of the unsafe condition in the Summary section and paragraph (d) of this AD to include some of the commenter's suggestions. The Discussion section of the NPRM is not restated in the final rule.

Request To Remove Interim Action

Boeing states that this AD is final action because the combination of life limits on the connector and eventual installation of ground-fault circuit protection provides an acceptable level of safety. Boeing notes that no activity is under way regarding redesign of the feed-through connector, and adds that no additional rulemaking is necessary at this time.

We agree with the commenter's request. We have evaluated the information provided, and we have removed the Interim Action paragraph in this AD. However, if further necessary action is later identified, we might consider further rulemaking then.

Request To Extend Grace Period

Delta Airlines asks that the grace period required by paragraph (f)(2) of the NPRM be extended to 36 months to coincide with the deadline for AD 2007–04–16, amendment 39–14948 (72

FR 7572, February 16, 2007). Delta adds that allowing the extension would better coordinate the maintenance between the NPRM and AD 2007–04–16.

We disagree with the commenter's request. AD 2007–04–16 was not identified in the NPRM as a related AD because those actions are not dependent upon the actions required by this AD. Replacing a fuel boost pump with a pump that has a new connector can be done during an overnight out-of-service period. In developing the 24-month compliance time for this AD action, we considered not only the safety implications of the identified unsafe condition, but the average utilization rate of the affected fleet, and the practical aspects of an orderly modification of the fleet during regular maintenance periods. In addition, we considered the manufacturer's recommendation for an appropriate compliance time. We have made no change to the AD in this regard.

Request To Change Paragraph (g)(2) of the NPRM

ANA states that the feed-through connector replacement was recommended in a preliminary revision of the referenced service information, but the re-identification method was not. ANA has replaced several fuel boost pumps but has not yet done the re-identification. ANA notes that, for this reason, the words ''and re-identified'' should be deleted from paragraph (g)(2) of the AD. ANA adds that if those words are left in that paragraph, a new optional paragraph should be added with the following compliance time: ''Within 96 months since the last replacement date of feed-through connector or before the accumulation of 40,000 flight hours after the last replacement of feed-through connector, whichever comes first.''

We do not agree with the commenter's requests. As noted previously, we have changed the compliance times in paragraphs (f) and (g) of this AD to set life limits based on the time accrued. Further, we consider re-identifying the pumps to be important for tracking the status of the fuel boost pumps. However, if operators have adequate maintenance records for the pumps, and a program is in place to ensure that feed-through connector replacements are done in a timely manner and endorsed by the FAA, we would consider a request for approval of an alternative method of compliance (AMOC) to the AD requirements according to the provisions of paragraph (j) of this AD. We have made no change to the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 941 airplanes of the affected design in the worldwide fleet. This AD affects about 414 airplanes of U.S. registry, at an average labor rate of $80 per work hour.

The fuel boost pump replacement will take about 3 work hours per boost pump (4 boost pumps per airplane) or up to 12 work hours per airplane, per replacement cycle. The parts cost for replacement fuel boost pumps will be offset by returning the existing fuel boost pumps to the manufacturer for rework. Based on these figures, the estimated cost of the AD for U.S. operators to replace the fuel boost pumps is up to $397,440, or up to $960 per airplane, per replacement cycle.

The feed-through connector replacement will take about 3 work hours per connector (4 connectors per airplane) or up to 12 work hours per airplane, per replacement cycle. Required parts will cost $691 per connector (up to $2,764 per airplane). Based on these figures, the estimated cost of the AD for U.S. operators to replace the feed-through connectors is up to $1,541,736, or up to $3,724 per airplane, per replacement cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–23–04 Boeing: Amendment 39–16076. Docket No. FAA–2007–28281; Directorate Identifier 2006–NM–238–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of cracking in the epoxy potting compound on the internal feed-through connector of the fuel boost pump in the area of the soldered wire connector lugs. We are issuing this AD to prevent a hazardous electrical path from the dry side to the wet side of the fuel boost

pump through a cracked feed-through connector, or between pins or a pin and the shell on one side of the feed-through connector, which could create an ignition source on the wet side of the fuel boost pump or cause a fire in the fuel boost pump enclosure and lead to subsequent explosion of the fuel tank.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Compliance Times for Initial Replacement

(f) For each main tank fuel boost pump: At the latest of the times specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, do the actions specified in paragraph (g) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–28A0095 or 767–28A0096; both dated September 15, 2005; as applicable.

(1) Within 96 months since the date of the first installation of the fuel boost pump or before the accumulation of 40,000 flight hours on the fuel boost pump, whichever comes first.

(2) Within 96 months since the date of replacement of the feed-through connector, or before the accumulation of 40,000 flight hours on the fuel boost pump since the date of replacement of the feed-through connector, whichever comes first.

(3) Within 24 months after the effective date of this AD.

Replacement of Fuel Boost Pump Feed-Through Connector

(g) At the compliance time specified in paragraph (f) of this AD: Replace the feed-through connector of each fuel boost pump as described in paragraph (g)(1) or (g)(2) of this AD.

(1) Replace the fuel boost pump with a new fuel boost pump.

(2) Replace the fuel boost pump with a modified and re-identified fuel boost pump having a new feed-through connector installed.

Note 1: Replacing the feed-through connector of each fuel boost pump, as required by paragraph (g) of this AD, may be done in different fuel boost pumps at different times provided the compliance times required by paragraph (f) of this AD are met for each pump.

Note 2: Boeing Alert Service Bulletins 767–28A0095 and 767–28A0096, both dated September 15, 2005, refer to Hamilton Sundstrand Alert Service Bulletin 5006003–28–A4, dated May 9, 2005, as a source of guidance for replacing the feed-through connector and re-identifying the fuel boost pump.

Repetitive Replacements

(h) Repeat the replacement required by paragraph (g) of this AD thereafter at intervals not to exceed the applicable times specified in paragraphs (h)(1) and (h)(2) of this AD:

(1) For airplanes on which the replacement specified in paragraph (g)(1) of this AD is done: Within 96 months since the date of the first installation of the fuel boost pump or before the accumulation of 40,000 flight hours on the fuel boost pump, whichever comes first.

(2) For airplanes on which the replacement specified in paragraph (g)(2) of this AD is done: Within 96 months since the date of replacement of the feed-through connector or before the accumulation of 40,000 flight hours on the fuel boost pump since the date of replacement of the feed-through connector, whichever comes first.

Parts Installation

(i) As of the effective date of this AD, no person may install a fuel boost pump on any airplane, unless that pump has a feed-through connector that meets the requirements of paragraphs (f) and (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to Judy Coyle, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6497; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(k) You must use Boeing Alert Service Bulletin 767–28A0095, dated September 15, 2005; or Boeing Alert Service Bulletin 767–28A0096, dated September 15, 2005; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on October 26, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26585 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0134; Directorate Identifier 2008–NM–162–AD; Amendment 39–16079; AD 2009–23–07]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

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

During 2008, two cases of main hydraulic accumulator failure were reported, one of which was caused by corrosion. Investigation has shown that a severe failure can occur to any of the four hydraulic accumulators which are installed in the hydraulic compartment. Either one of the two end parts on the accumulator may depart from the pressure vessel due to corrosion. This condition, if not corrected, is likely to degrade the functionality of the hydraulic system, possibly resulting in degradation or total loss of control of the landing gear, flap actuation and brakes. A severe failure during flight may even result in debris penetrating and exiting the fuselage outer skin. When such a failure occurs while the aeroplane is on the ground, as in the two reported cases, this may cause severe damage to the fuselage and result in injuries to persons nearby.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 14, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 14, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on August 12, 2009 (74 FR 40527). That supplemental NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During 2008, two cases of main hydraulic accumulator failure were reported, one of which was caused by corrosion. Investigation has shown that a severe failure can occur to any of the four hydraulic accumulators which are installed in the hydraulic compartment. Either one of the two end parts on the accumulator may depart from the pressure vessel due to corrosion. This condition, if not corrected, is likely to degrade the functionality of the hydraulic system, possibly resulting in degradation or total loss of control of the landing gear, flap actuation and brakes. A severe failure during flight may even result in debris penetrating and exiting the fuselage outer skin. When such a failure occurs while the aeroplane is on the ground, as in the two reported cases, this may cause severe damage to the fuselage and result in injuries to persons nearby.

Since [EASA] AD 2008–0146 was issued, one more case of main hydraulic accumulator failure has been reported, which occurred in flight during final approach. The aeroplane was able to land safely and there were no injuries reported on the aeroplane or on the ground.

To address and correct this unsafe condition, a modified hydraulic accumulator has been developed, which is sealed between the barrel and the screw cap and between the screw cap and the end cap.

For the reasons described above, this EASA AD requires the replacement of the affected hydraulic accumulators P/N (part number) 08 8423 001 1 and P/N 08 8423 030 1, as identified in Saab SB (Service Bulletin) 340–29–023, with a modified hydraulic accumulator.

This AD is revised to indicate that the accomplishment of SAAB SB 340–29–024 is another acceptable method to correct the unsafe condition.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the supplemental NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 111 products of U.S. registry. We also estimate that it takes 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost $8,800 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be $1,047,840, or $9,440 or per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–23–07 Saab AB, Saab Aerosystems: Amendment 39–16079. Docket No. FAA–2009–0134; Directorate Identifier 2008–NM–162–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B airplanes, all serial numbers, certificated in any category; on which hydraulic accumulators with part number (P/N) 08 8423 001 1 or P/N 08 8423 030 1 are installed, except accumulators with serial numbers listed in paragraph 3.B. of Saab Service Bulletin 340–29–023, Revision 01, dated April 3, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During 2008, two cases of main hydraulic accumulator failure were reported, one of which was caused by corrosion. Investigation has shown that a severe failure can occur to any of the four hydraulic accumulators which are installed in the hydraulic compartment. Either one of the two end parts on the accumulator may depart from the pressure vessel due to corrosion. This condition, if not corrected, is likely to degrade the functionality of the hydraulic system, possibly resulting in degradation or total loss of control of the landing gear, flap actuation and brakes. A severe failure during flight may even result in debris penetrating and exiting the fuselage outer skin. When such a failure occurs while the aeroplane is on the ground, as in the two reported cases, this may cause severe damage to the fuselage and result in injuries to persons nearby.

Since AD 2008–0146 was issued, one more case of main hydraulic accumulator failure has been reported, which occurred in flight during final approach. The aeroplane was able to land safely and there were no injuries reported on the aeroplane or on the ground.

To address and correct this unsafe condition, a modified hydraulic accumulator has been developed, which is sealed between the barrel and the screw cap and between the screw cap and the end cap.

For the reasons described above, this EASA AD requires the replacement of the affected hydraulic accumulators P/N (part number) 08 8423 001 1 and P/N 08 8423 030 1, as identified in Saab SB (Service Bulletin) 340–29–023, with a modified hydraulic accumulator.

This AD is revised to indicate that the accomplishment of SAAB SB 340–29–024 is another acceptable method to correct the unsafe condition.

Actions and Compliance

(f) Unless already done, replace the hydraulic accumulator at the applicable time specified in paragraph (f)(1) or (f)(2) of this AD in accordance with the instructions of Saab Service Bulletin 340–29–023 or 340–29–024, both Revision 01, both dated April 3, 2009, as applicable.

(1) For airplanes on which the manufacturing date of the hydraulic accumulator is June 2000 or earlier: Replace the accumulator with a new or modified accumulator within 12 months after the effective date of this AD.

(2) For airplanes on which the manufacturing date of the accumulator is July 2000 or later: Replace the accumulator with a new or modified accumulator within 10 years after the manufacturing date or within 12 months after the effective date of this AD, whichever occurs later.

(3) As of 12 months after the effective date of this AD, no person may install a hydraulic accumulator, P/N 08 8423 001 1 or P/N 08 8423 030 1 on any airplane, except accumulators with serial numbers listed in paragraph 3.B. of Saab Service Bulletin 340–29–023, Revision 01, dated April 3, 2009.

(4) Actions done before the effective date of this AD in accordance with Saab Service Bulletin 340–29–023, dated June 10, 2008, are acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Where the MCAI includes a compliance time of ''24 months,'' we have determined that a compliance time of ''within 12 months after the effective date of the AD'' is appropriate. The manufacturer and EASA agree with this reduction in compliance time.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0146R1, dated April 16, 2009; and Saab Service Bulletins 340–29–023 and 340–29–024, both Revision 01, both dated April 3, 2009; for related information.

Material Incorporated by Reference

(i) You must use Saab Service Bulletin 340–29–023, Revision 01, dated April 3, 2009; or Saab Service Bulletin 340–29–024, Revision 01, dated April 3, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Saab Aircraft AB, SAAB Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail *saab2000.techsupport@saabgroup.com*; Internet *http://www.saabgroup.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on October 26, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26591 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0689; Directorate Identifier 2009–NM–092–AD; Amendment 39–16081; AD 2009–23–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

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

Two cases have been reported in which the ADG [air driven generator] has failed to power the essential bus following in-flight deployment as part of its periodic operational check. Subsequent inspection revealed that the ADG power feeder harness wire (* * * [aromatic polyimide]) had chafed on the backshell of its own connector (P1XC), resulting in a short circuit, wire damage and disconnection of the wire from the ADG. Coupled with a dual generator failure, such a disconnection would result in the loss of emergency power to critical systems, with a consequent adverse effect on the controllability of the aircraft.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 14, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 14, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 5, 2009 (74 FR 38999). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Two cases have been reported in which the ADG [air driven generator] has failed to power the essential bus following in-flight deployment as part of its periodic operational check. Subsequent inspection revealed that the ADG power feeder harness wire (* * * [aromatic polyimide]) had chafed on the backshell of its own connector (P1XC), resulting in a short circuit, wire damage and disconnection of the wire from the ADG. Coupled with a dual generator failure, such a disconnection would result in the loss of emergency power to critical systems, with a consequent adverse effect on the controllability of the aircraft.

This directive mandates an inspection to determine the type of wire in the installed ADG power feeder harness. If the wires are a * * * [aromatic polyimide] type, the ADG power feeder harness is to be replaced with one incorporating * * * [non-aromatic polyimide] type wire.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect about 203 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $32,480, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket

contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–23–09 Bombardier, Inc. (Formerly Canadair): Amendment 39–16081. Docket No. FAA–2009–0689; Directorate Identifier 2009–NM–092–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes, certificated in any category, as identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Bombardier Model CL–600–1A11 (CL–600) airplanes, serial numbers 1004 through 1085 inclusive.

(2) Bombardier Model CL–600–2A12 (CL–601) airplanes, serial numbers 3001 through 3066 inclusive.

(3) Bombardier Model CL–600–2B16 (CL–601–3A) airplanes, serial numbers 5001 through 5131 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Two cases have been reported in which the ADG [air driven generator] has failed to power the essential bus following in-flight deployment as part of its periodic operational check. Subsequent inspection revealed that the ADG power feeder harness wire (* * * [aromatic polyimide]) had chafed on the backshell of its own connector (P1XC), resulting in a short circuit, wire damage and disconnection of the wire from the ADG. Coupled with a dual generator failure, such a disconnection would result in the loss of emergency power to critical systems, with a consequent adverse effect on the controllability of the aircraft.

This directive mandates an inspection to determine the type of wire in the installed ADG power feeder harness. If the wires are a * * * [aromatic polyimide] type, the ADG power feeder harness is to be replaced with one incorporating * * * [non-aromatic polyimide] type wire.

Actions and Compliance

(f) Unless already done, within 26 months after the effective date of this AD, inspect the ADG power feeder harness to determine the wire type, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 600–0737 or 601–0591, both dated July 23, 2007, as applicable. A review of airplane maintenance records is acceptable in lieu of this inspection if the wire type of the power feeder harness can be conclusively determined from that review. If the wire type is determined to be aromatic polyimide, replace the ADG power feeder harness, before further flight, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 600–0737 or 601–0591, both dated July 23, 2007, as applicable.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wing Chan, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–18, dated April 27, 2009; and Bombardier Service Bulletins 600–0737 and 601–0591, both dated July 23, 2007; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 600–0737, dated July 23, 2007; or Bombardier Service Bulletin 601–0591, dated July 23, 2007; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on Ocotober 26, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26593 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1215; Directorate Identifier 2008–NM–072–AD; Amendment 39–16077; AD 2009–23–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–111, –112, A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing

airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Two incidents have occurred due to the lack of visibility on the Primary Flight Display (PFD) of the Traffic Alert and Collision Avoidance System (TCAS) indications.

* * * * *

We are issuing this AD to prevent possible mid-air collisions due to lack of visibility of TCAS indications on the PFD. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 14, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 14, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 17, 2008 (73 FR 67813). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Two incidents have occurred due to the lack of visibility on the Primary Flight Display (PFD) of the Traffic Alert and Collision Avoidance System (TCAS) indications.

EIS2 [electronic instrument system 2] standard S7 introduces modifications to the vertical speed indication to improve the legibility in case of TCAS Resolution Advisory.

The modifications consist in changing the colour of the needle and increasing the width of the TCAS green band.

This AD supersedes [EASA] AD 2006–0108 [dated May 3, 2006]. Also, as all aircraft in this AD applicability have been retrofitted to at least S4.2 standard, the operational limitations contained in the Compliance paragraph 2. of AD 2006–0108 have already been addressed.

This AD therefore mandates the installation of the improved EIS2 standard S7.

We are issuing this AD to prevent possible mid-air collisions due to lack of visibility of TCAS indications on the PFD. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Support for the AD

The Air Line Pilots Association, International (ALPA), fully supports the intent of the AD.

Request To Revise Applicability

Airbus requests that we remove the reference to Airbus Service Bulletin A320–31–1234 from paragraph (c), ''Applicability,'' of the NPRM. Airbus explains that only airplanes that are equipped with EIS2 standard 4.2 installed by Modification 34571 or Airbus Service Bulletin A320–31A1220 have the unsafe condition identified in the NPRM; airplanes equipped with EIS2 standard 4 installed in accordance with Airbus Service Bulletin A320–31–1234 are not affected by the unsafe condition. Airbus also explains that there are some ''anti'' modifications existing to retrieve EIS1 configuration which do not have this unsafe condition identified in the NPRM and should be excluded from the applicability.

We agree with the request to revise the applicability of the AD. We have revised paragraph (c) of this AD to remove the reference to Airbus Service Bulletin A320–31–1234. We have also revised paragraph (c) of this AD to specify that airplanes on which Airbus Modification 35270 has been incorporated are excluded from the requirements of this AD.

Request To Use Alternative Stowage Method

Frontier Airlines requests that we revise the NPRM to specify that operators may stow software media in locations other than those described in the service bulletin. Frontier points out that it does not store loadable software media in the cockpit in the way implied by Airbus Mandatory Service Bulletin A320–31–1276, Revision 01, dated March 5, 2008. (We referred to Airbus Mandatory Service Bulletin A320–31–1276, Revision 01, dated March 5, 2008, in the NPRM as the appropriate source of service information for accomplishing the required actions.)

We agree with the request to revise the AD to allow different stowage locations for software media. We have changed paragraph (f)(1) of the AD to indicate that operators may stow software media in locations other than those described in the service bulletin. We have coordinated this issue with the European Aviation Safety Agency (EASA).

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 113 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $36,160, or $320 per product.

Authority for This Rulemaking

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

Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–23–05 Airbus: Amendment 39–16077. Docket No. FAA–2008–1215; Directorate Identifier 2008–NM–072–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111, A318–112, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–111, A320–211, A320–212, A320–214, A320–231, A320–232, A320–233, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 series airplanes, certificated in any category; equipped with EIS2 (electronic instrument system 2) standard S4.2 (DMC disk part number F1419418) installed by Airbus Modification 34571, or Airbus Service Bulletin A320–31A1220; except those airplanes on which Airbus Modification 35270 or Airbus Modification 36725 has been embodied in production.

Subject

(d) Air Transport Association (ATA) of America Code 31: Instruments.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Two incidents have occurred due to the lack of visibility on the Primary Flight Display (PFD) of the Traffic Alert and Collision Avoidance System (TCAS) indications.

EIS2 standard S7 introduces modifications to the vertical speed indication to improve the legibility in case of TCAS Resolution Advisory.

The modifications consist in changing the colour of the needle and increasing the width of the TCAS green band.

This AD supersedes AD 2006–0108 [dated May 3, 2006]. Also, as all aircraft in this AD applicability have been retrofitted to at least S4.2 standard, the operational limitations contained in the Compliance paragraph 2. of AD 2006–0108 have already been addressed.

This AD therefore mandates the installation of the improved EIS2 standard S7.

We are issuing this AD to prevent possible mid-air collisions due to lack of visibility of TCAS indications on the PFD.

Actions and Compliance

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

(1) Within 12 months after the effective date of this AD, install EIS2 standard S7 (DMC disk part number F1461768), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–31–1276, Revision 01, dated March 5, 2008. Operators may stow software media in locations other than those described in the service bulletin.

(2) Installations done before the effective date of this AD in accordance with Airbus Service Bulletin A320–31–1263, Revision 01, dated July 20, 2007; Airbus Service Bulletin A320–31–1263, Revision 02, dated August 10, 2007; Airbus Service Bulletin A320–31–1263, Revision 03, dated November 23, 2007; or Airbus Service Bulletin A320–31–1276, dated April 18, 2007; are acceptable for compliance with the requirements of paragraph (f)(1) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: This AD does not include the operational limitations specified in paragraph 1 of the MCAI. The MCAI carried these limitations forward from European Aviation Safety Agency (EASA) Airworthiness Directive 2006–0108, dated May 3, 2006. The FAA-approved Master Minimum Equipment List (MMEL) already contains these and more restrictive operational limitations, and we previously determined that no action was required on our part regarding this provision of EASA AD 2006–0108.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, ANM–116, International Branch, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2008–0032, dated February 21, 2008; and Airbus Mandatory Service Bulletin A320–31–1276, Revision 01, dated March 5, 2008; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A320–31–1276, Revision 01, dated March 5, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: account.airworth-eas@airbus.com; Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 26, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–26586 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 090126060–91251–01]

RIN 0694–AE53

Revisions to the Export Administration Regulations Based on the 2008 Missile Technology Control Regime Plenary Additions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were accepted by MTCR member countries at the November 2008 Plenary in Canberra, Australia. In addition, this rule also clarifies certain EAR controls to properly reflect the intent of changes to items that were previously accepted by MTCR members at past MTCR Plenary meetings.

DATES: *Effective Date:* This rule is effective November 9, 2009. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE53, by any of the following methods:

E-mail: publiccomments@bis.doc.gov Include ''RIN 0694–AE53'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE53.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AE53)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Dennis L. Krepp, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482–1309.

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including most of the world's advanced suppliers of ballistic missiles and missile-related materials and equipment. The regime establishes a common export control policy based on a list of controlled items (the Annex) and on guidelines (the Guidelines) that member countries implement in accordance with their national export controls. The goal of maintaining the Annex and the Guidelines is to stem the flow of missile systems capable of delivering weapons of mass destruction to the global marketplace.

While the MTCR was originally created to prevent the spread of missiles capable of carrying a nuclear warhead, it was expanded in January 1993 to also address threats associated with delivery systems for chemical and biological weapons. MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. The implementation of the regime's Guidelines is effectuated through the national export control laws and policies of the regime members.

In January 1993, complete rocket systems and unmanned aerial vehicle systems that were capable of a ''range'' equal to or greater than 300 km, regardless of the payload, were added to the MTCR Annex (Category II, Item 19). This was based on concerns of MTCR members that rocket systems and unmanned aerial vehicle systems that were capable of a ''range'' equal to or greater than 300 km, but that did not meet the 500 kg ''payload'' parameter from Category I of the MTCR Annex, were a proliferation concern. ''Missiles'' are defined in § 772.1 of the EAR as being capable of delivering at least 500 kilograms payload to a range of at least 300 kilometers. To supplement the change made in 1993, the MTCR members decided at the 2008 Plenary to clarify the controls applicable to ECCN 2B116 by making it clear that the items in this ECCN were controlled when used in systems that were capable of a range of at least 300 km, regardless of the payload capacity. For consistency with the MTCR Annex, this same language also needed to be added to ECCN 1B101. Therefore, this rule clarifies the scope of these ECCNs by adding the new language ''capable of a range of at least 300 km'' to these ECCNs.

Amendments to the Export Administration Regulations

This final rule revises the Export Administration Regulations (EAR) to reflect changes to the MTCR Annex accepted at the November 2008 Plenary in Canberra, Australia. In addition, this rule also clarifies certain EAR controls to properly reflect the intent of changes to items previously accepted by MTCR members at past MTCR Plenary meetings. Corresponding MTCR Annex references are provided below for the MTCR Annex changes accepted at the November 2008 Plenary.

This rule amends the Commerce Control List (CCL) (Supplement No. 1 to

Part 774 of the EAR) to reflect changes to the MTCR Annex. Specifically, the following Export Control Classification Numbers (ECCNs) are affected:

The heading of ECCN 1B101 is amended by revising the heading to add the text ''usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems''. This change makes it clear that this ECCN controls this type of equipment only if it is usable for these types of systems and their subsystems. This change is expected to have a minimal impact on license applications.

Also under ECCN 1B101, paragraph (a) is amended by adding additional text to expand the scope of equipment controlled in this entry (MTCR Annex Change Category II: Item 6.B.1.a). Paragraph (a) is amended to add certain fiber placement machines to the types of equipment controlled under paragraph (a). This change is being made because a determination was made by the MTCR members that in addition to certain filament winding machines, certain fiber placement machines are also a concern for missile proliferation. BIS expects this change to result in a slight increase in the number of license applications submitted.

The License Requirements and ''items'' paragraph of ECCN 1C011 are amended to correct the text by deleting the reference to boron carbide and replacing it with boron alloy in the MT control section of this ECCN, and by making conforming changes to the MT and NS License Requirements for this ECCN. This is a change made to conform to the MTCR Annex. The correct language from the MTCR Annex is boron alloy, but because 1C001.b is also a National Security (NS) controlled paragraph that correctly uses the text boron carbide for the NS portion of the control, this rule needed to add the correct text for the MT controlled boron alloy. To effect this change, reference to boron alloy was included in a new ''items'' paragraph in this ECCN (1C011.e), but reference to boron carbide is retained in the NS control section of this ECCN. Paragraph 1C011.b still controls boron for MT reasons, and therefore, to conform with the text of the MTCR Annex, this rule clarifies the MT control to make it clear what portion of paragraph 1C011.b is MT controlled. This rule also revises the NS control section of 1C011 to specify that the NS control applies to the entire entry, with the exception of 1C011.e. This change is expected to have no impact on license applications.

The heading of ECCN 2B116 is amended by including the text ''usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems'' (MTCR Annex Change Category II: Item 15.B.1). This change makes it clear that this ECCN controls these vibration test systems and equipment only if they are usable for these types of systems and their subsystems. This change is expected to have a minimal impact on license applications.

Also under ECCN 2B116, paragraph (b) is amended by adding text to clarify the scope of the entry (MTCR Annex Change Category II: Item 15.B.1.b). Specifically, this rule adds the word ''control'' after the word ''real-time'' to clarify that the bandwidth that is within the scope of this ECCN entry is 'real-time control bandwidth'. This change is being made for consistency with the MTCR Annex and to provide better guidance to the public regarding the intent of this control. BIS expects this change to have a minimal impact on license applications.

Also under ECCN 2B116, this rule adds a new technical note to the ''items'' paragraph to provide an ECCN-specific definition of 'real-time control bandwidth', which is now defined as, ''the maximum rate at which a controller can execute complete cycles of sampling, processing data and transmitting control signals'' (MTCR Annex Change Category II: Technical note to Item 15.B.1.b) This new definition will assist the public in understanding the scope of this revised control parameter. BIS expects this change to have a minimal impact on license applications.

Paragraph (b) of ECCN 2B120 is amended by adding text to clarify the types of motion simulators/rate tables classified under this entry. Specifically, this rule clarifies that the motion simulators/rate tables controlled under this ECCN entry include motion simulators/rate tables designed or modified to incorporate sliprings or integrated non-contact devices capable of transferring electrical power, signal information or both (MTCR Annex Change Category II: Item 9.B.2.c.2). This change is being made to provide for consistency with the MTCR Annex and to provide better guidance to the public regarding the intent of this control. Specifically, the additional text on sliprings is added for greater clarity regarding intent of the control, and the text on non-contact devices is added to reflect accepted provisions by the MTCR members. BIS expects this change to have a minimal impact on license applications.

Also, in paragraph (c)(3) of ECCN 2B120, this rule adds quotation marks around the term ''accuracy'' to indicate that this CCL term is a defined term in § 772.1 of the EAR (MTCR Annex Change Category II: Item 9.B.c.3.c). BIS expects this change to have no impact on license applications, as BIS has always interpreted this term according to the definition in § 772.1.

Paragraph (b) of ECCN 2B121 is amended by adding quotation marks around the term ''accuracy'' to indicate that this CCL term is a defined term in § 772.1 of the EAR (MTCR Annex Change Category II: Item 9.B.2.d.2). BIS expects this change to have no impact on license applications, as BIS has always interpreted this term according to the definition in § 772.1.

The heading of ECCN 2B122 is amended by adding text to clarify the types of centrifuges classified under this entry. Specifically, this rule clarifies that the centrifuges controlled under this ECCN heading include centrifuges designed or modified to incorporate sliprings or integrated non-contact devices capable of transferring electrical power, signal information or both (MTCR Annex Change Category II: Item 9.B.2.e). This change is being made for consistency with the MTCR Annex and to provide better guidance to the public regarding the intent of this control. Specifically, the additional text on sliprings is added for greater clarity regarding intent of the control and the text on non-contact devices is added to reflect accepted provisions by the MTCR members. BIS expects this change to have a minimal impact on license applications.

Paragraph (b)(2)(a) of ECCN 6A108 is amended by revising the control parameter for milliradians from 3 to 1.5 milliradians (MTCR Annex Change Category II: Item 12.A.5.b.1). BIS is changing this milliradian control threshold because the current text was based on an erroneous conversion factor and the MTCR members accepted that using 1.5 milliradians would be sufficient to capture systems of concern for missile proliferation. BIS expects this change to have no impact on license applications.

The MT ''control(s)'' paragraph in the License Requirements section of ECCN 7A003 is amended to clarify that the MT control applies to commodities in 7A003.d that meet or exceed the parameters of 7A103. Prior to the publication of this rule, the MT control applied to ''items'' paragraphs a, b, c, and d of this ECCN entry. However, there is no corresponding control text in the MTCR Annex for ECCN 7A003 ''items'' paragraphs a, b and c. The

corresponding control text in the MTCR Annex for ECCN 7A003 only applies to ''items'' paragraph d of this ECCN entry, which this change clarifies. BIS expects this change to have no impact on license applications because the rule makes no change to the commodities controlled under this ECCN entry; the rule is limited to clarifying what portions of this ECCN entry are subject to MT controls.

Paragraph (b) of ECCN 7A101 is amended to add text to clarify the scope of this ECCN entry (MTCR Annex Change Category II: Item 9.A.5). Specifically, this rule modifies the control parameter to clarify that only accelerometers that are designed for use in inertial navigation systems or in guidance systems of all types fall within the scope of this ECCN entry. Paragraph (b) of ECCN 7A101 is also amended to add a note to further clarify that the ECCN does not include accelerometers that are designed to measure vibration or shock (MTCR Annex Change Category II: Item 9.A.5). This change is being made to clarify what types of accelerometers are within the scope of this ECCN. This more precise text will clearly indicate to the public what accelerometers are within the scope of this ECCN. BIS expects these two changes to have no impact on license applications as BIS has always interpreted this ECCN in this manner.

The heading of ECCN 7A102 is amended and new ''items'' paragraphs (a) and (b) are added to clarify the scope of this ECCN entry as it relates to gyros (MTCR Annex Change Category II: Item 9.A.5). Specifically this rule modifies the control parameter to clarify that only gyros that are designed for use in inertial navigation systems or in guidance systems of all types fall within the scope of this ECCN entry. BIS expects this change to have no impact on license applications as BIS has always interpreted this ECCN in this manner.

Paragraph (a) of ECCN 7A103 is amended by redesignating the existing Note to paragraph (a) as Note 1 and adding a new Note 2 to clarify what ECCN 7A001 and 7A002 commodities are within the scope of ''items'' paragraph (a) of ECCN 7A103. This new note clarifies that ''items'' paragraph (a) does not control inertial or other equipment using accelerometers or gyros controlled by 7A001 or 7A002 that are only NS controlled.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on November 9, 2009, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before December 9, 2009. Any such items not actually exported or reexported before midnight, on December 9, 2009, require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009 (74 FR 41325 (August 14, 2009)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 Fed. Reg. 41325 (August 14, 2009).

■ 2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1B101 is amended by revising the Heading and paragraph (a) of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1B101 Equipment, other than that controlled by 1B001, for the ''production'' of structural composites, fibers, prepregs or preforms, usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems, as follows (see List of Items Controlled); and specially designed components, and accessories therefor.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Filament winding machines or fiber placement machines, of which the motions for positioning, wrapping and winding fibers can be coordinated and programmed in three or more axes, designed to fabricate composite structures or laminates from fibrous or filamentary materials, and coordinating and programming controls;

* * * * *

■ 3. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals,

''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C011 is amended:

■ a. By revising the License Requirements section;

■ b. By revising paragraph (d) of the ''items'' paragraph in the List of Items Controlled section; and

■ c. By adding paragraph (e) at the end of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

1C011 Metals and compounds, as follows (see List of Items Controlled). License Requirements.

Reason for Control: NS, MT, AT

Control(s)	*Country chart*
NS applies to entire entry, except 1C011.e.	NS Column 1.
MT applies to 1C011.a and .b (for boron) and .e.	MT Column 1.
AT applies to entire entry	AT Column 1.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

d. Nitroguanidine (NQ) (CAS 556–88–7);

e. Boron alloys of 85% purity or higher and a particle size of 60 μm or less.

■ 4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B116 is amended:

■ a. By revising the Heading;

■ b. By revising paragraph (b) of the ''items'' paragraph in the List of Items Controlled section; and

■ c. By revising the Technical Notes at the end of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

2B116 Vibration test systems and equipment, usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems, and components therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

b. Digital controllers, combined with specially designed vibration test ''software'', with a 'real-time control bandwidth' greater than 5 kHz and designed for use with vibration test systems described in 2B116.a;

c. * * *

d. * * *

Technical Notes:

(1) 'Bare table' means a flat table, or surface, with no fixture or fitting.

(2) 'Real-time control bandwidth' is defined as the maximum rate at which a controller can execute complete cycles of sampling, processing data and transmitting control signals.

■ 5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B120 is amended by revising paragraphs (b) and (c)(3) of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

2B120 Motion simulators or rate tables (equipment capable of simulating motion), having all of the following characteristics (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

b. Designed or modified to incorporate sliprings or integrated non-contact devices capable of transferring electrical power, signal information, or both; *and*

c. Having any of the following characteristics:

* * * * *

c.3. A positioning ''accuracy'' equal to or better than 5 arc-second.

* * * * *

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B121 is amended by revising paragraph (b) of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

2B121 Positioning tables (equipment capable of precise rotary position in any axis), other than those controlled in 2B120, having all the following characteristics (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

b. A positioning ''accuracy'' equal to or better than 5 arc-second.

* * * * *

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B122 is amended by revising the Heading, to read as follows:

2B122 Centrifuges capable of imparting accelerations above 100 g and designed or modified to incorporate sliprings or integrated non-contact devices capable of transferring electrical power, signal information, or both.

* * * * *

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A108 is amended by revising paragraph (b)(2)(a) of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

6A108 Radar systems and tracking systems, other than those controlled by 6A008, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

b.2. * * *

b.2.a. Angular resolution better than 1.5 milliradians;

* * * * *

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A003 is amended by revising the MT ''Control(s)'' paragraph in the License Requirements section, to read as follows:

7A003 Inertial Systems and specially designed components therefor. License Requirements.

Reason for Control: * * *

Control(s)	*Country chart*
* * *	* *
MT applies to commodities in 7A003.d that meet or exceed the parameters of 7A103.	MT Column 1.

* * * * *

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A101 is amended:

■ a. By revising paragraph (b) of the ''items'' paragraph in the List of Items Controlled section, and

■ b. By adding a new ''Note to paragraph (b)'' at the end of paragraph (b) of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

7A101 Accelerometers, other than those controlled by 7A001 (see List of Items Controlled), and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

* * * * *

b. Accelerometers of any type, designed for use in inertial navigation systems or in guidance systems of all types, specified to function at acceleration levels greater than 100 g.

Note to paragraph (b): This paragraph (b) does not include accelerometers that are designed to measure vibration or shock.

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A102 is amended:
■ a. By revising the Heading, and
■ b. By revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

7A102 Gyros, other than those controlled by 7A002 (see List of Items Controlled), and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. All types of gyros, usable in rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km, with a rated ''drift rate'' 'stability' of less than 0.5 degrees (1 sigma or rms) per hour in a 1 g environment.

b. Gyros of any type, designed for use in inertial navigation systems or in guidance systems of all types, specified to function at acceleration levels greater than 100 g.

Technical Note: In this entry, the term 'stability' is defined as a measure of the ability of a specific mechanism or performance coefficient to remain invariant when continuously exposed to a fixed operating condition. (This definition does not refer to dynamic or servo stability.) (IEEE STD 528–2001 paragraph 2.247).

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A103 is amended by redesignating the Note as Note 1 and adding a Note 2 at the end of paragraph (a) of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

7A103 Instrumentation, navigation equipment and systems, other than those controlled by 7A003, and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. * * *

Note 1: 7A103.a does not control equipment containing accelerometers specially designed and developed as MWD (Measurement While Drilling) sensors for use in down-hole well services operations.

Note 2: 7A103.a does not control inertial or other equipment using accelerometers or gyros controlled by 7A001 or 7A002 that are only NS controlled.

* * * * *

Dated: November 4, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E9–26961 Filed 11–6–09; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

[RIN 3038–AC38]

Commodity Pool Operator Periodic Account Statements and Annual Financial Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending its regulations governing the periodic account statements that commodity pool operators (''CPOs'') are required to provide to commodity pool participants and the annual financial reports that CPOs are required to provide to commodity pool participants and file with the National Futures Association (''NFA''). The amendments: specify detailed information that must be included in the periodic account statements and annual reports for commodity pools with more than one series or class of ownership interest; clarify that the periodic account statements must disclose either the net asset value per outstanding participation unit in the pool, or the total value of a participant's interest or share in the pool; extend the time period for filing and distributing annual reports of commodity pools that invest in other funds; codify existing Commission staff interpretations regarding the proper accounting treatment and financial statement presentation of certain income and expense items in the periodic account statements and annual reports; streamline annual reporting requirements for pools ceasing operation; establish conditions for use of International Financial Reporting Standards (''IFRS'') in lieu of U.S. Generally Accepted Accounting Principles (''U.S. GAAP'') and a notice procedure for CPOs to claim such relief; and clarify and update several other requirements for periodic and annual reports prepared and distributed by CPOs.

DATES: *Effective date:* This rule is effective December 9, 2009.

Applicability dates: Amendments to §§ 4.7(b)(3) and 4.22(c) (other than 4.22(c)(7)) are applicable to commodity pool annual reports for fiscal years ending December 31, 2009 and later.

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SUPPLEMENTARY INFORMATION:

I. Background

On February 24, 2009, the Commission published [1] for public comment proposed amendments to the reporting provisions applicable to CPOs under Part 4 of its regulations (''Proposed Part 4 Amendments'').[2] Pursuant to regulations contained in Part 4, a registered CPO must distribute an account statement to each participant in each commodity pool that it operates within 30 days of the end of the reporting period, and must file with NFA, and provide to each participant, an annual financial report for each commodity pool that it operates within 90 days of the end of the pool's fiscal year or the permanent cessation of the pool's trading. The Part 4 Amendments codify existing staff interpretations, clarify reporting for series funds, extend financial reporting filing deadlines for CPOs operating commodity pools that that in invest in other funds, and streamline certain filing requirements for pools ceasing operation.

II. Comments Received

The Commission received four comment letters in response to the Proposed Part 4 Amendments. Comments were submitted by NFA; the Committee on Futures Regulation of the New York City Bar Association (''NYC Bar''); Arthur F. Bell & Associates, LLC,

[1] 74 FR 8220 (February 24, 2009).

[2] Commission regulations referred to herein are found at 17 CFR Ch. I (2009 edition).

an accounting firm (''Arthur Bell CPAs''); and the Managed Funds Association (''MFA''). All of the commenters generally supported the proposed amendments. Each of the commenters, however, had specific suggestions regarding clarification of certain aspects of the proposal. The commenters' suggestions are discussed below.

III. The Final Regulations

A. Periodic Account Statements for Regulation 4.7-Exempt Pools

Regulation 4.7(b)(2) requires the CPO of a commodity pool for which the CPO has claimed an exemption under Regulation 4.7 (*i.e.,* a ''Regulation 4.7-exempt commodity pool'') to provide each participant in the pool with periodic account statements that must indicate: (1) The net asset value of the exempt pool as of the end of the reporting period; (2) the change in net asset value of the exempt pool from the end of the previous reporting period; and (3) the net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period.

The Commission proposed to amend Regulation 4.7(b)(2) to clarify that the periodic account statement provided to each pool participant must disclose either the net asset value per outstanding participation unit, or the total value of the participant's interest or share, in the commodity pool as of the end of the reporting period. The proposal was intended to ensure that pool participants receive sufficient information to determine the value of their investments in the commodity pool from the periodic account statement, particularly for non-unitized pools. The proposed amendments also would conform the account statement requirements for Regulation 4.7-exempt pools to those for non-exempt pools under Regulation 4.22(a).

The Commission did not receive any comments regarding the proposed amendments to Regulation 4.7(b)(2). For the reasons set forth above and in the Proposed Part 4 Amendments, the Commission is adopting the amendments as proposed.

B. Series Pools and Pools With Multiple Classes of Ownership Interests

The ownership structure of a commodity pool may be organized to include more than one series or class of ownership interest. The commodity pool may have more than one ownership series or class due to differences in fees and expenses charged to the series or classes, currency denomination of the series or classes, trading strategies, cash management strategies, or other aspects of the operation of the pool.

Pool financial statements prepared pursuant to both Regulation 4.22(c) and Regulation 4.7(b)(3) must be presented and computed in accordance with Generally Accepted Accounting Principles (''GAAP''). GAAP provides guidance regarding the presentation of financial statements for series funds [3] and for investment funds with multiple ownership classes.[4] As noted in the Proposed Part 4 Amendments, Commission staff has received several inquiries from CPOs, their attorneys and accountants, and NFA regarding the proper presentation of periodic account statements and annual financial reports for series funds and multi-class pools.

In order to address issues raised with series funds and to address the proper accounting treatment under GAAP, the Commission proposed to amend Regulations 4.7(b)(2) and 4.22(a) to specify that, for series funds structured with a limitation on liability among the different series, the periodic account statement may include only the information for the series being reported, although additional information on other series may be provided. The Commission further proposed that for multi-class funds and for series funds that were not structured with a limitation on liability among the different series or classes, net asset value and other information required by the regulations must be presented for both the pool as a whole as well as for each series or class of ownership interest.

The Commission also proposed to amend Regulations 4.7(b)(3) and 4.22(c) to clarify that, for series funds structured with a limitation on liability among the different series, the annual report may include only the information for the series being reported. The Commission further noted that for both periodic account statements and annual financial reports, CPOs of series funds with a limitation on liability among the different series were not precluded by the proposed amendments from providing financial information to participants for other series or classes of a respective pool.

The Commission did not receive any comment regarding the above proposals. For the reasons set forth above and in the Proposed Part 4 Amendments, the Commission is adopting the amendments as proposed.

C. Changes to Fund of Funds Extension Provisions Under Regulation 4.22(f)(2)

Regulations 4.7(b)(3) and 4.22(c) require a CPO to provide to each participant in each commodity pool that the CPO operates an annual report for the commodity pool within 90 calendar days of the end of the pool's fiscal year. The CPO is further required to submit a copy of the annual report electronically to NFA.

Regulation 4.22(f)(2) permits a CPO of a commodity pool that invests in other funds (referred to as a ''fund of funds'') to claim up to an additional 60 days to distribute the pool's annual report to pool participants and to file a copy with NFA. A CPO may claim the Regulation 4.22(f)(2) fund of funds 60-day extension by filing with NFA an initial notice, containing specified representations, in advance of the annual report's due date for the first year the extension is claimed. In subsequent years, the CPO may confirm that the circumstances necessitating the relief continue to apply by restating certain representations in a statement filed at the same time as the pool's annual report.

The self-certification procedures for claiming an extension of the filing deadline for a fund of funds under Regulation 4.22(f)(2) currently are applicable only to CPOs that distribute annual reports that are audited by independent public accountants. CPOs of funds of funds that distribute unaudited annual financial reports to participants pursuant to Regulation 4.7(b)(3) may not claim an extension of the filing deadline under Regulation 4.22(f)(2). Such CPOs, however, may request from NFA up to a 90-day extension of the filing deadline under Regulation 4.22(f)(1).

As discussed in the Proposed Part 4 Amendments, in adopting Regulation 4.22(f)(2), the Commission anticipated that a substantial majority of the CPOs of funds of funds would be able to distribute to the participants and to file with NFA the pools' annual reports within 150 days of the end of the respective commodity pool's fiscal year.[5] The number of CPOs that have requested additional extensions under Regulation 4.22(f)(1) after having claimed the 60-day extension under Regulation 4.22(f)(2), however, has increased significantly in recent years. To address this issue, the Commission proposed to extend from 60 to 90 days the maximum period of additional time

[3] American Institute of Certified Public Accountants (''AICPA'') Audit and Accounting Guide, Investment Companies paragraph 7.03.

[4] AICPA Audit and Accounting Guide, Investment Companies, Chapter 5, *Complex Capital Structures.*

[5] 65 FR 81333 at 81334 (December 26, 2000).

that a CPO that operates a commodity pool that invests in other funds may claim under Regulation 4.22(f)(2).

The Commission also proposed to extend the application of Regulation 4.22(f)(2) to CPOs that operate Regulation 4.7-exempt commodity pools that do not prepare financial statements audited by independent public accountants. As noted in the Proposed Part 4 Amendments, Regulation 4.22(f)(2) was adopted, in large part, to address difficulties that CPOs experience in obtaining timely information about their pools' investments in other funds in order for the pools' public accountants to prepare audited financial statements. Annual reports that are not audited, however, are still required to be prepared in accordance with GAAP. CPOs need information establishing the value of the pools' material investments from the investee funds. These investments may be in a number of investee funds, such as other commodity pools, securities funds, or hedge funds, both domestic and offshore. The information that the CPOs require frequently is unavailable until the investee funds complete their own audited financial statements. Thus, in many cases, the CPOs cannot obtain the information they require about the investee funds in time for the annual financial reports of the pools to be prepared and distributed by the due date. To address this issue, the Commission proposed to permit CPOs of funds of funds for which unaudited annual reports are prepared to be able to claim the extension under Regulation 4.22(f)(2).

In addition, the Commission proposed to eliminate the requirement that a CPO that filed a claim of extension under Regulation 4.22(f)(2) for a particular pool restate certain representations in a statement filed with the pool's annual reports in subsequent years. Instead, under the proposal, the CPO would be presumed to operate the pool as a fund of funds and otherwise continue to qualify for the automatic extension. The CPO, however, must provide NFA with notice if the pool no longer operates as a fund of funds and must distribute the pool's annual report to pool participants and file a copy with NFA within 90 days of the pool's fiscal year-end, as required by Regulation 4.22(c).

The Commission received several comments generally supporting the proposed amendments, and no commenter opposed the proposed amendments. NFA and Arthur Bell CPAs supported the proposed amendments to Regulation 4.22(f)(2) extending the amount of time within which funds of funds must file their reports from 150 to 180 days after fiscal year end. NFA, however, commented that multi-tiered funds of funds could still have difficulty obtaining necessary information if their investee funds are commodity pools and the CPOs of the investee funds had claimed an extension under Regulation 4.22(f)(2) of up to 180 days. In such situations, the CPO of the fund of funds may not receive annual reports for investee funds until 180 days after the end of the investee fund's year-end, which would coincide with the due date for the CPO of the fund of funds to distribute an annual report to participants in the fund of funds. In its comment letter, NFA suggested that the Commission amend Regulation 4.22(f)(1) to provide for an additional extension of up to 210 days after the pool's year end to provide CPOs of funds of funds with additional time to prepare and to distribute annual reports for the commodity pool. The Commission did not receive any comments regarding the proposal to eliminate, after the initial year, the requirement in Regulation 4.22(f)(2) that a CPO claiming an extension of time provide a statement containing representations regarding operating a fund of funds each year after the initial year.

Arthur Bell CPAs further supported the proposal to extend the availability of the fund of funds extension to Regulation 4.7-exempt pools for which audited reports are not prepared, noting that even for an unaudited report, the additional time is necessary due to the requirement under GAAP to provide a condensed schedule of investments, which necessitates obtaining information from investee funds.

The Commission has considered the comments received and is adopting the amendments to Regulations 4.22(f)(1) and (2) as proposed. The Commission acknowledges that a CPO of a multi-tiered fund of funds may face challenges in obtaining the appropriate detailed financial information from each investee fund. The Commission, however, must balance the challenges faced by the CPO of a fund of funds with the need of pool participants to receive financial information regarding the performance of a fund in as timely a manner as possible. Based upon its review of annual report filings of commodity pools over the last several years, the Commission does not believe that there is a sufficient basis to propose additional extension provisions under Regulation 4.22(f)(1) that would extend the filing deadline to 210 days after the end of a pool's fiscal year end. Commission staff will monitor filings under the revised fund of funds timeframe closely to ascertain whether any further changes may be warranted.

In addition, under the regulations as amended, CPOs that previously have claimed the fund of funds extension will not need to file new or revised notices with NFA in order to claim the additional 30 days to file and to distribute their qualifying pools' annual reports. However, the Commission continues to expect CPOs to file and to distribute their pools' annual reports as soon as possible after the pools' fiscal year-ends to ensure that participants obtain information that is as current as possible.

D. Procedures for Preparation and Filing of Reports for Liquidating Pools

The Commission proposed to clarify and to streamline procedures for CPOs filing final reports for pools that had ceased operation. Currently, Regulation 4.22(c) requires a CPO of a commodity pool that has ceased operation to distribute a final annual report to commodity pool participants and to file a copy with NFA within 90 days of the pool's permanent cessation of trading, but in no event longer than 90 days after funds are returned to pool participants. The Commission proposed to eliminate the confusion created by the reference in Regulation 4.22(c) to two possible timeframes for filing a final annual report by amending the regulation to specify that the final annual report must be filed no later than 90 days after the pool ceases trading. Under the proposed amendment, if a CPO has not distributed all funds to participants by the date that the report is issued, the CPO must provide information about the return of funds to pool participants, including an estimate of the value of funds remaining to be distributed and the anticipated timeframe of when those funds are expected to be returned. When the remaining funds are returned to participants, the CPO should send a notice to all participants and to NFA. The proposed amendment also would permit CPOs to prepare unaudited final reports as long as the CPO obtains from all participants, and files with NFA, written waivers of their right to receive an audited report.

NFA supported the Commission's proposal to clarify the timeframe within which the final report must be filed; however, MFA noted that requiring reports to be filed within 90 days of the cessation of trading would create reporting inefficiencies for CPOs and participants of pools that hold assets that are difficult to liquidate. MFA's comment letter described scenarios in which inefficiencies would be created, such as when the pool holds assets that

cannot be liquidated for an extended period of time, or the pool is involved in bankruptcy. The MFA comment letter also noted that a CPO may have difficulty in obtaining an audit opinion on financial statements for a pool that has significant assets that have not been liquidated.

MFA suggested as an alternative to the proposal that CPOs that have determined to liquidate a pool provide notice to NFA and pool participants shortly after the pool ceases trading, and file the pool's final annual report within 90 days of returning funds to the participants. NFA suggested an alternative to the proposed requirement that CPOs that have not distributed all funds by the time the final report is filed provide notice to NFA when the final distribution is completed. NFA proposed that only those CPOs that have not returned funds within the time frame specified in the final annual report would provide notice to NFA, along with an explanation of why the distribution has not been completed. NFA would then monitor these pools until all funds are returned.

The Commission has considered carefully the comments regarding the timeframe within which a CPO must provide a final report for a pool that has ceased operation and has determined to modify the proposed changes to address concerns raised by the commenters, including the addition of an option for CPOs that are unable to complete the liquidation of a pool in sufficient time to prepare, distribute and file the pool's final report within 90 days of the permanent cessation of trading. Under the amended regulation, a CPO generally would be required to provide a liquidating pool's final report within 90 days of the cessation of trading. The final report may contain only the Statements of Operations and Changes in Net Assets; an explanation of the winding down of the pool's operations; written disclosure that all interests in, and assets of, the pool have been redeemed, distributed or transferred on behalf of the participants; and, if all funds have not been distributed at the time the report is issued, disclosure of the value of the assets remaining to be distributed and the expected timeframe for their distribution. If the CPO has not completed the distribution of funds within the timeframe specified in the final report, the CPO will be required to provide notice to NFA and the pool's participants containing information about the value of the pool's remaining assets, the expected timeframe for liquidation, any fees and expenses that will continue to be charged to the pool, and the extent to which reports will continue to be provided to participants pursuant to the pool's operative documents. The Commission notes that the latter requirement is for the purpose of disclosure, and is not intended to relieve CPOs of their obligation to continue to comply with the periodic and annual reporting requirements. In this connection, the Commission notes that MFA requested in its comment letter that CPOs that are unable to provide a final annual report within 90 days be permitted to provide quarterly rather than monthly periodic account statements to participants. Pools operating pursuant to Regulation 4.7 currently are permitted to provide quarterly statements; CPOs that are required to provide monthly account statements may request relief under Regulation 4.12(a).

Both NFA and MFA commented on the waiver provisions of the proposed requirement that CPOs be permitted to prepare unaudited final reports as long as the CPO obtains from all participants, and files with NFA, written waivers of their right to receive an audited report. NFA recommended that rather than filing all waivers with NFA, the CPO file a certification with NFA that a waiver has been received from each participant. The CPO would be required to make the waivers available to NFA on request. MFA noted that for pools with many participants, obtaining the waivers would be difficult and suggested that the Commission instead adopt a negative consent procedure. The Commission has determined that it is not in the public interest to permit CPOs to provide unaudited reports to participants who are entitled to receive audited reports without the affirmative consent of the participants. However, it will be sufficient for the CPO to certify to NFA that it has obtained waivers from all of the pool's participants, provided that the CPO maintain all the waivers and make them available to NFA or the Commission upon request.

Finally, in order to accommodate the appropriate numbering of changes to Regulation 4.22(c), the Commission is redesignating existing paragraph 4.22(c)(6) as 4.22(c)(8).

E. Codifying Existing Policies Regarding Special Allocations of Ownership Equity, Unrealized Gains and Losses, and Investee Funds' Income and Expenses

The Commission proposed to codify staff interpretations regarding reporting in a pool's annual financial report special allocations of partnership equity from limited partners to the general partner or any other special class of partner; combining gains and losses on regulated futures transactions with gains and losses on non-CFTC regulated transactions that are part of the same trading strategy in the Statement of Operations; and disclosing in the notes to the financial statements the amounts of management and incentive fees and expenses indirectly incurred as a result of investing in any fund where the investment in the fund exceeded five percent of the pool's net asset value. One commenter specifically addressed the proposed requirement to disclose information on the amounts of income and expenses associated with a pool's investments in investee funds. Arthur Bell CPAs noted that in some cases, it may not be possible for CPOs to obtain the information about investee funds' fees and expenses that would be required under proposed Regulation 4.22(c)(5)(i), stating that some investee funds are not obligated to report this information, and other funds may not maintain records of allocations of management and incentive fees or indirect expenses relative to the fund of fund's investment. The comment letter from Arthur Bell CPAs suggested that the proposed regulation be revised to state that in such cases, a CPO would be permitted to disclose that certain information required under this section is not available, if the CPO has made a good faith effort to obtain the information.

As noted in the proposing release, Division of Clearing and Intermediary Oversight (''DCIO'') staff has encouraged CPOs to disclose income and fee information for investee pools for many years, on the basis that such information is material for pool participants to comprehend fully the investment strategy and fee structure of a commodity pool. However, the illustration of investee fund disclosure that has been included as an attachment to DCIO's annual guidance letter to CPOs allows that in unusual circumstances, a CPO may state that it does not have information on specific fees and expenses. In order to address the issue noted in the comment, the Commission is adopting this regulation generally as proposed, with the addition of an option for a CPO that does not have the specific amounts of fees and expenses to disclose instead the percentage amounts and computational basis for each such fee and include a statement that the CPO is not able to obtain the specific fee amounts for this fund.

F. Use of International Financial Reporting Standards in the Preparation of Commodity Pool Annual Financial Reports

Regulation 4.22(d) requires that audited and unaudited financial statements of commodity pools, as well as periodic account statements, be presented and computed in accordance with GAAP. This provision consistently has been interpreted by Commission staff to mean GAAP as established in the United States (''U.S. GAAP'').

The Commission proposed to amend Regulation 4.22(d) to permit CPOs that operate commodity pools organized under the laws of a foreign jurisdiction to prepare financial statements for such pools using International Financial Reporting Standards (''IFRS'') as issued by the International Accounting Standards Board in lieu of U.S. GAAP. The proposal specified that the IFRS financial statements contain a condensed Schedule of Investments as set forth in Statement of Accounting Positions 95–2, 01–1, and 03–04 issued by the AICPA; report special allocations of partnership equity in accordance with Commission Interpretative Letter 94–3; and, in the event that IFRS would require that the pool consolidate its financial statements with another entity, such as a feeder fund consolidating with its master fund, all applicable disclosures required by U.S. GAAP for the feeder must be presented with the reporting pool's consolidated financial statements. In addition, the use of accounting standards other than U.S. GAAP must not conflict with any representations made in offering memoranda or similar documents provided to participants or potential participants in the pool. The proposal further required that a CPO may claim the above relief by filing a notice with NFA within 90 days of the end of the commodity pool's fiscal year.

The NYC Bar commented on two technical aspects of the proposal. First, with respect to the timeframe within which a CPO that is seeking relief from the U.S. GAAP requirement under proposed Regulation 4.22(d)(2)(ii), the NYC Bar stated that the proposed regulation and accompanying explanatory text were confusing as to when the notice must be filed. The NYC Bar suggested that the adopting release clarify that a notice claiming relief must be filed within 90 days after the end of the pool's fiscal year in order to be effective. The Commission has considered the NYC Bar's comments and has amended Regulation 4.22(d)(2)(ii) to provide that the notice must be filed with NFA within 90 days after the end of the pool's fiscal year.

Second, the NYC Bar suggested that the provision in proposed Regulation 4.22(d)(2)(i)(C) requiring that the CPO represent that the use of IFRS for the preparation of the commodity pool's financial statements was not inconsistent with the pool's ''offering memorandum or similar document'' be replaced with ''offering memorandum or other operative document.'' This suggestion was intended to provide for a broader range of operating documents in which such information may be provided. The Commission has considered the comment and agrees that including the information on the accounting standards to be followed by the pool in any operative document that is provided or available to participants is consistent with the objectives of the proposed regulation, and therefore is adopting a final regulation that requires such disclosure in the pool's offering memorandum or any other operative document that is made available to participants or prospective participants.

In addition, in developing these final regulations, the Commission has noted that the use of IFRS for preparing pool financial statements generally would extend to the computations that form the basis for the information reported in periodic account statements required by Regulations 4.22(a) and 4.7(b)(2). Therefore, the Commission is adopting changes to Regulations 4.22(a) and 4.7(b)(2) to permit CPOs that have claimed the relief available in Regulation 4.22(d), as amended, to present the pool's periodic account statements on the same basis as they are computing and presenting the pool's financial statements.

G. GAAP Requirements in Regulation 4.13

Regulation 4.13 provides an exemption from registration for CPOs that operate only one pool at a time, for which no advertising is done and no compensation is received; or that operate pools that include no more than 15 participants each, and the aggregate subscriptions to all pools do not exceed $400,000. Regulation 4.13 further provides an exemption from registration for CPOs of pools whose participants are SEC ''accredited investors'' [6] and that limit the pool's trading of commodity interests to a *de minimis* amount, or that limit participation in the pool to certain highly sophisticated investors. Regulation 4.13(c) specifies that, if a CPO that has claimed an exemption from registration under Regulation 4.13 distributes an annual report to pool participants, the annual report must be presented and computed in accordance with GAAP and, if audited by an independent public accountant, certified in accordance with Regulation 1.16.

The Commission proposed to amend Regulation 4.13(c) to delete the requirement that the annual reports for pools for which the CPO has claimed exemption from registration under Regulation 4.13 must be presented and computed in accordance with GAAP and, if audited by an independent public accountant, certified in accordance with Regulation 1.16. As noted in the Proposed Part 4 Amendments, the annual reports are not required by Commission regulations to be prepared, distributed, or filed, and therefore the Commission does not need to prescribe the form of such reports.

The Commission did not receive any comments regarding the proposed amendments to Regulation 4.13(c). The Commission has determined to adopt the amendments as proposed.

H. Updating References to Financial Schedules

The Commission proposed to update both the periodic and annual reporting provisions of Part 4 to conform with current accounting practices with respect to the references to various financial schedules. No comments were received on this proposal. Therefore, the Commission is adopting amendments to delete references to the Statement of Changes in Financial Position, which no longer exists; rename the Statement of Income (Loss) as the Statement of Operations; and rename the Statement of Changes in Net Asset Value as the Statement of Changes in Net Assets.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has determined previously that registered CPOs are not small entities for the purpose of the RFA.[7] The proposed amendments to Regulation 4.7 and Regulation 4.22 would apply only to registered CPOs. With respect to CPOs exempt from registration, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Regulation 4.13(a)(2). The proposed amendment to

[6] 17 CFR 230.501(a) (2009).

[7] 47 FR 18618, 18619 (April 30, 1982).

Regulation 4.13 would remove an existing requirement and does not impose any significant burdens. The Commission's proposal solicited public comment on this analysis.[8] No comments were received. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action it is taking herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

This rulemaking modifies existing regulatory requirements by clarifying information that must be included in required periodic and annual reports, increasing slightly the burden for this collection of information due to including specific fee and expense information in annual reports for funds of funds. The proposing release included an estimate of the impact of these changes on the paperwork burden under existing information collection 3038–0005, and also corrected a previous calculation error with respect to the total number of respondents. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission submitted a copy of this section to the Office of Management and Budget (''OMB'') for its review. No comments were received in response to the Commission's invitation in the notice of proposed rulemaking[9] to comment on any change in the potential paperwork burden associated with these rule amendments. The information collection burdens created by the Commission's proposed rules, which were discussed in detail in the proposing release, are identical to the information collection burdens of the final rules.

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

■ Accordingly, 17 CFR Chapter I is amended as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

■ 2. In § 4.7:

■ a. Add paragraphs (b)(2)(iii)(A) and (B) and (b)(2)(iv) and (v);

■ b. Revise paragraphs (b)(3)(i) introductory text and (b)(3)(i)(B) and (C);

■ c. Add paragraph (b)(3)(i)(D); and

■ d. Revise paragraph (b)(3)(ii).

The additions and revisions read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(b) * * *

(2) * * *

(iii)(A) Either the net asset value per outstanding participation unit in the exempt pool as of the end of the reporting period, or

(B) The total value of the participant's interest or share in the exempt pool as of the end of the reporting period.

(iv) Where the pool is comprised of more than one ownership class or series, the net asset value of the series or class on which the account statement is reporting, and the net asset value per unit or value of the participant's share, also must be included in the statement required by this paragraph (b)(2); except that, for a pool that is a series fund structured with a limitation on liability among the different series, the account statement required by this paragraph (b)(2) is not required to include the consolidated net asset value of all series of the pool.

(v) A commodity pool operator of a pool that meets the conditions specified in § 4.22(d)(2)(i) of this part to present and compute the commodity pool's financial statements contained in the Annual Report in accordance with International Financial Reporting Standards issued by the International Accounting Standards Board and has filed notice pursuant to § 4.22(d)(2)(ii) of this part also may use such International Financial Reporting Standards in the computation and presentation of the account statement.

(3) *Annual report relief.* (i) Exemption from the specific requirements of § 4.22(c) and (d) of this part; *Provided,* That within 90 calendar days after the end of the exempt pool's fiscal year or the permanent cessation of trading, whichever is earlier, the commodity pool operator electronically files with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by those sections, an annual report for the exempt pool, affirmed in accordance with § 4.22(h) which contains, at a minimum:

* * * * *

(B) A Statement of Operations for that year;

(C) Appropriate footnote disclosure and such further material information as may be necessary to make the required statements not misleading. For a pool that invests in other funds, this information must include, but is not limited to, separately disclosing the amounts of income, management and incentive fees associated with each investment in an investee fund that exceeds five percent of the pool's net assets. The income, management and incentive fees associated with an investment in an investee fund that is less than five percent of the pool's net assets may be combined and reported in the aggregate with the income, management and incentive fees of other investee funds that, individually, represent an investment of less than five percent of the pool's net assets. If the commodity pool operator is not able to obtain the specific amounts of management and incentive fees charged by an investee fund, the commodity pool operator must disclose the percentage amounts and computational basis for each such fee and include a statement that the CPO is not able to obtain the specific fee amounts for this fund;

(D) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the financial statements are reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the financial statements are not required to include consolidated information for all series.

(ii) Except as provided in § 4.22(d)(2) of this part, such annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and, if certified by an independent public accountant, so certified in accordance with § 1.16 of this chapter as applicable.

* * * * *

§ 4.13 [Amended]

■ 3. Amend § 4.13 by removing paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2).

■ 4. In § 4.22:

■ a. Revise paragraphs (a) introductory text, (a)(1) introductory text, and (a)(2) introductory text;

■ b. Add paragraphs (a)(5) and (6);

[8] 74 FR 8225 (February 24, 2009).

[9] *Id.*

■ c. Revise paragraphs (c) introductory text, (c)(4), and (c)(5);
■ d. Redesignate paragraph (c)(6) as paragraph (c)(8), and add new paragraphs (c)(6) and (7); and
■ e. Revise paragraphs (d), (e) and (f)(2).

The revisons and additions read as follows:

§ 4.22 Reporting to pool participants.

(a) Except as provided in paragraph (a)(4) or (a)(6) of this section, each commodity pool operator registered or required to be registered under the Act must periodically distribute to each participant in each pool that it operates, within 30 calendar days after the last date of the reporting period prescribed in paragraph (b) of this section, an Account Statement, which shall be presented in the form of a Statement of Operations and a Statement of Changes in Net Assets, for the prescribed period. These financial statements must be presented and computed in accordance with generally accepted accounting principles consistently applied. The Account Statement must be signed in accordance with paragraph (h) of this section.

(1) The portion of the Account Statement which must be presented in the form of a Statement of Operations must separately itemize the following information:

* * * * *

(2) The portion of the Account Statement that must be presented in the form of a Statement of Changes in Net Assets must separately itemize the following information:

* * * * *

(5) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the account statement is reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the account statement is not required to include consolidated information for all series.

(6) A commodity pool operator of a pool that meets the conditions specified in paragraph (d)(2)(i) of this section and has filed notice pursuant to paragraph (d)(2)(ii) of this section may elect to follow the same accounting treatment with respect to the computation and presentation of the account statement.

* * * * *

(c) Except as provided in paragraph (c)(7) or (c)(8) of this section, each commodity pool operator registered or required to be registered under the Act must distribute an Annual Report to each participant in each pool that it operates, and must electronically submit a copy of the Report and key financial balances from the Report to the National Futures Association pursuant to the electronic filing procedures of the National Futures Association, within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier; *Provided, however,* that if during any calendar year the commodity pool operator did not operate a commodity pool, the pool operator must so notify the National Futures Association within 30 calendar days after the end of such calendar year. The Annual Report must be affirmed pursuant to paragraph (h) of this section and must contain the following:

* * * * *

(4) Statements of Operations, and Changes in Net Assets, for the period between—

(i) The later of:

(A) The date of the most recent Statement of Financial Condition delivered to the National Futures Association pursuant to this paragraph (c); or

(B) The date of the formation of the pool; and

(ii) The close of the pool's fiscal year, together with Statements of Operations, and Changes in Net Assets for the corresponding period of the previous fiscal year.

(5) Appropriate footnote disclosure and such further material information as may be necessary to make the required statements not misleading. For a pool that invests in other funds, this information must include, but is not limited to, separately disclosing the amounts of income, management and incentive fees associated with each investment in an investee fund that exceeds five percent of the pool's net assets. The management and incentive fees associated with an investment in an investee fund that is less than five percent of the pool's net assets may be combined and reported in the aggregate with the income, management and incentive fees of other investee funds that, individually, represent an investment of less than five percent of the pool's net assets. If the commodity pool operator is not able to obtain the specific amounts of management and incentive fees charged by an investee fund, the commodity pool operator must disclose the percentage amounts and computational basis for each such fee and include a statement that the CPO is not able to obtain the specific fee amounts for this fund;

(6) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the financial statements are reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the financial statements are not required to include consolidated information for all series.

(7) For a pool that has ceased operation prior to, or as of, the end of the fiscal year, the commodity pool operator may provide the following, within 90 days of the permanent cessation of trading, in lieu of the annual report that would otherwise be required by § 4.22(c) or § 4.7(b)(3):

(i) Statements of Operations and Changes in Net Assets for the period between—

(A) The later of:

(*1*) The date of the most recent Statement of Financial Condition filed with the National Futures Association pursuant to this paragraph (c); or

(*2*) The date of the formation of the pool; and

(B) The close of the pool's fiscal year or the date of the cessation of trading, whichever is earlier; and

(ii)(A) An explanation of the winding down of the pool's operations and written disclosure that all interests in, and assets of, the pool have been redeemed, distributed or transferred on behalf of the participants;

(B) If all funds have not been distributed or transferred to participants by the time that the final report is issued, disclosure of the value of assets remaining to be distributed and an approximate timeframe of when the distribution will occur. If the commodity pool operator does not distribute the remaining pool assets within the timeframe specified, the commodity pool operator must provide written notice to each participant and to the National Futures Association that the distribution of the remaining assets of the pool has not been completed, the value of assets remaining to be distributed, and a time frame of when the final distribution will occur.

(C) If the commodity pool operator will not be able to liquidate the pool's assets in sufficient time to prepare, file and distribute the final annual report for the pool within 90 days of the permanent cessation of trading, the commodity pool operator must provide written notice to each participant and to National Futures Association disclosing:

(*1*) The value of investments remaining to be liquidated, the timeframe within which liquidation is expected to occur, any impediments to liquidation, and the nature and amount

of any fees and expenses that will be charged to the pool prior to the final distribution of the pool's funds;

(*2*) Which financial reports the commodity pool operator will continue to provide to pool participants from the time that trading ceased until the final annual report is distributed, and the frequency with which such reports will be provided, pursuant to the pool's operative documents; and

(*3*) The timeframe within which the commodity pool operator will provide the final report.

(iii) A report filed pursuant to this paragraph (c)(7) that would otherwise be required by this paragraph (c) is not required to be audited in accordance with paragraph (d) of this section if the commodity pool operator obtains from all participants written waivers of their rights to receive an audited Annual Report, and at the time of filing the Annual Report with National Futures Association, certifies that it has received waivers from all participants. The commodity pool operator must maintain the waivers in accordance with § 1.31 of this chapter and must make the waivers available to the Commission or National Futures Association upon request.

* * * * *

(d)(1) The financial statements in the Annual Report must be presented and computed in accordance with generally accepted accounting principles consistently applied and must be audited by an independent public accountant. The requirements of § 1.16(g) of this chapter shall apply with respect to the engagement of such independent public accountants, except that any related notifications to be made may be made solely to the National Futures Association, and the certification must be in accordance with § 1.16 of this chapter, except that the following requirements of that section shall not apply:

(i) The audit objectives of § 1.16(d)(1) concerning the periodic computation of minimum capital and property in segregation;

(ii) All other references in § 1.16 to the segregation requirements; and

(iii) Section 1.16(c)(5), (d)(2), (e)(2), and (f).

(2)(i) The financial statements in the Annual Report required by this section or by § 4.7(b)(3) may be presented and computed in accordance with International Financial Reporting Standards issued by the International Accounting Standards Board if the following conditions are met:

(A) The pool is organized under the laws of a foreign jurisdiction;

(B) The Annual Report will include a condensed schedule of investments, or, if required by the alternate accounting standards, a full schedule of investments;

(C) The preparation of the pool's financial statements under International Financial Reporting Standards is not inconsistent with representations set forth in the pool's offering memorandum or other operative document that is made available to participants;

(D) Special allocations of ownership equity will be reported in accordance with § 4.22(e)(2); and

(E) In the event that the International Financial Reporting Standards require consolidated financial statements for the pool, such as a feeder fund consolidating with its master fund, all applicable disclosures required by generally accepted accounting principles for the feeder fund must be presented with the reporting pool's consolidated financial statements.

(ii) The commodity pool operator of a pool that meets the conditions specified in this paragraph (d)(2) may claim relief from the requirement in paragraph (d)(1) of this section by filing a notice with the National Futures Association, within 90 calendar days after the end of the pool's fiscal year.

(A) The notice must contain the name, main business address, main telephone number and the National Futures Association registration identification number of the commodity pool operator, and name and the identification number of the commodity pool.

(B) The notice must include representations regarding the pool's compliance with each of the conditions specified in § 4.22(d)(2)(A) through (D), and, if applicable, (E); and

(C) The notice must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

(e)(1) The Statement of Operations required by this section must itemize brokerage commissions, management fees, advisory fees, incentive fees, interest income and expense, total realized net gain or loss from commodity interest trading, and change in unrealized net gain or loss on commodity interest positions during the pool's fiscal year. Gains and losses on commodity interests need not be itemized by commodity or by specific delivery or expiration date.

(2)(i) Any share of a pool's profits or transfer of a pool's equity which exceeds the general partner's or any other class's share of profits computed on the general partner's or other class's pro rata capital contribution are ''special allocations.'' Special allocations of partnership equity or other interests must be recognized in the pool's Statement of Operations in the same period as the net income, interest income, or other basis of computation of the special allocation is recognized. Special allocations must be recognized and classified either as an expense of the pool or, if not recognized as an expense of the pool, presented in the Statement of Operations as a separate, itemized allocation of the pool's net income to arrive at net income available for pro rata distribution to all partners.

(ii) Special allocations of ownership interest also must be reported separately in the Statement of Partners' Equity, in addition to the pro-rata allocations of net income, as to each class of ownership interest.

(3) Realized gains or losses on regulated commodities transactions presented in the Statement of Operations of a commodity pool may be combined with realized gains or losses from trading in non-commodity interest transactions, provided that the gains or losses to be combined are part of a related trading strategy. Unrealized gains or losses on open regulated commodity positions presented in the Statement of Operations of a commodity pool may be combined with unrealized gains or losses from open positions in non-commodity positions, provided that the gains or losses to be combined are part of a related trading strategy.

(f) * * *

(2) In the event a commodity pool operator finds that it cannot obtain information necessary to prepare annual financial statements for a pool that it operates within the time specified in either paragraph (c) of this section or § 4.7(b)(3)(i), as a result of the pool investing in another collective investment vehicle, it may claim an extension of time under the following conditions:

(i) The commodity pool operator must, within 90 calendar days of the end of the pool's fiscal year, file a notice with the National Futures Association, except as provided in paragraph (f)(2)(v) of this section.

(ii) The notice must contain the name, main business address, main telephone number and the National Futures Association registration identification number of the commodity pool operator, and name and the identification number of the commodity pool.

(iii) The notice must state the date by which the Annual Report will be distributed and filed (the ''Extended Date''), which must be no more than 180 calendar days after the end of the pool's fiscal year. The Annual Report must be distributed and filed by the Extended Date.

(iv) The notice must include representations by the commodity pool operator that:

(A) The pool for which the Annual Report is being prepared has investments in one or more collective investment vehicles (the ''Investments'');

(B) For all reports prepared under paragraph (c) of this section and for reports prepared under § 4.7(b)(3)(i) that are audited by an independent public accountant, the commodity pool operator has been informed by the independent public accountant engaged to audit the commodity pool's financial statements that specified information required to complete the pool's annual report is necessary in order for the accountant to render an opinion on the commodity pool's financial statements. The notice must include the name, main business address, main telephone number, and contact person of the accountant; and

(C) The information specified by the accountant cannot be obtained in sufficient time for the Annual Report to be prepared, audited, and distributed before the Extended Date.

(D) For unaudited reports prepared under § 4.7(b)(3)(i), the commodity pool operator has been informed by the operators of the Investments that specified information required to complete the pool's annual report cannot be obtained in sufficient time for the Annual Report to be prepared and distributed before the Extended Date.

(v) For each fiscal year following the filing of the notice described in paragraph (f)(2)(i) of this section, for a particular pool, it shall be presumed that the particular pool continues to invest in another collective investment vehicle and the commodity pool operator may claim the extension of time; *Provided, however,* that if the particular pool is no longer investing in another collective investment vehicle, then the commodity pool operator must file electronically with the National Futures Association an Annual Report within 90 days after the pool's fiscal year-end accompanied by a notice indicating the change in the pool's status.

(vi) Any notice or statement filed pursuant to this paragraph (f)(2) must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

* * * * *

Issued in Washington, DC, on November 2, 2009, by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E9–26789 Filed 11–6–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

Economic Sanctions Enforcement Guidelines

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury is issuing this final rule, ''Economic Sanctions Enforcement Guidelines,'' as enforcement guidance for persons subject to the requirements of U.S. sanctions statutes, Executive orders, and regulations. This rule was published as an interim final rule with request for comments on September 8, 2008. This final rule sets forth the Enforcement Guidelines that OFAC will follow in determining an appropriate enforcement response to apparent violations of U.S. economic sanctions programs that OFAC enforces. These Enforcement Guidelines are published as an Appendix to the Reporting, Procedures and Penalties Regulations.

DATES: This final rule is effective November 9, 2009.

FOR FURTHER INFORMATION CONTACT: Elton Ellison, Assistant Director, Civil Penalties, (202) 622–6140 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Procedural Requirements

Because this final rule imposes no obligations on any person, but only explains OFAC's enforcement policy and procedures based on existing substantive rules, prior notice and public comment are not required pursuant to 5 U.S.C. 553(b)(A). Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. This final rule is not a significant regulatory action for purposes of Executive Order 12866.

Although a prior notice of proposed rulemaking was not required, OFAC solicited comments on this final rule in order to consider how it might make improvements to these Guidelines. OFAC received a total of 11 comments.

The collections of information related to the Reporting, Procedures and Penalties Regulations have been previously approved by the Office of Management and Budget (OMB) under control number 1505–0164. A small adjustment to that collection was submitted to OMB in order to take into account the voluntary self-disclosure process set forth in the Guidelines. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This collection of information is referenced in subpart I of Part I, subpart G of part III and subpart B of part V of these Guidelines, which will constitute the new Appendix to part 501. The referenced subparts explain that the voluntary self-disclosure of an apparent violation to OFAC will be considered in determining the appropriate agency response to the apparent violation and, in cases where a civil monetary penalty is deemed appropriate, the penalty amount. As set forth in subpart B of part V of the Guidelines, an apparent violation involving a voluntary self-disclosure will result in a base penalty amount at least 50 percent less than the base penalty amount in similar cases that do not involve a voluntary self-disclosure. This provides an incentive for persons who have or may have violated economic sanctions laws to voluntarily provide OFAC information that it can use to better implement its economic sanctions programs. The submitters who will likely seek to avail themselves of the benefits of voluntary self-disclosure are businesses, other entities, and individuals who find that they have or may have violated a sanctions prohibition and wish to disclose their actual or potential violation.

The estimated total annual reporting and/or recordkeeping burden: 1,250 hours. *The estimated annual burden per respondent/record keeper:* 10 hours. *Estimated number of respondents and/or record keepers:* 125. *Estimated annual frequency of responses:* Once or less, given that OFAC expects that persons who voluntarily self disclose their violations will take better care to avoid future violations.

Background

The primary mission of OFAC is to administer and enforce economic sanctions against targeted foreign countries and regimes, terrorists and terrorist organizations, weapons of mass destruction proliferators, narcotic traffickers, and others, in furtherance of U.S. national security, foreign policy, and economic objectives. OFAC acts under Presidential national emergency powers, as well as specific legislation, to prohibit transactions and block (or ''freeze'') assets subject to U.S. jurisdiction. Economic sanctions are designed to deprive the target of the use of its assets and to deny it access to the U.S. financial system and the benefits of trade, transactions, and services involving U.S. markets, businesses, and individuals. These same authorities have also been used to protect certain assets subject to U.S. jurisdiction and to further important U.S. nonproliferation goals.

OFAC administers and enforces economic sanctions programs pursuant to Presidential and statutory authorities. OFAC is responsible for civil investigation and enforcement of economic sanctions violations committed by Subject Persons, as defined in the Guidelines. Where appropriate, OFAC may coordinate its investigative and enforcement activities with federal, state, local and/or foreign regulators and/or law enforcement agencies. Active enforcement of these programs is a crucial element in preserving and advancing the national security, foreign policy, and economic objectives that underlie these initiatives. Among other things, penalties, both civil and criminal, are intended to serve as a deterrent to conduct that undermines the goals of sanctions programs.

On January 29, 2003, OFAC published, as a proposed rule, generally applicable Economic Sanctions Enforcement Guidelines, as well as a proposed Appendix to the Cuban Assets Control Regulations (CACR) providing a schedule of proposed civil monetary penalties for certain violations of the CACR (Cuba Penalty Schedule). Though this proposed rule was not finalized, OFAC used the generally applicable guidelines set forth therein as a general framework for its enforcement actions and the Cuban Penalty Schedule as a framework for the imposition of civil monetary penalties for the violations of the CACR described therein. On January 12, 2006, OFAC published, as an interim final rule, Economic Sanctions Enforcement Procedures for Banking Institutions, which withdrew the January 29, 2003, proposed rule to the extent that it applied to banking institutions, as defined in the interim final rule.

On October 16, 2007, the President signed into law the International Emergency Economic Powers Enhancement Act (Enhancement Act),[1] substantially increasing the maximum penalties for violations of the International Emergency Economic Powers Act (IEEPA),[2] a principal statutory authority for most OFAC sanctions programs. The increased maximum penalty amounts set forth in the Enhancement Act, as well as its application to pending cases involving apparent violations of IEEPA, prompted the development of new Guidelines for determining an appropriate enforcement response to apparent violations of sanctions programs enforced by OFAC, and, in cases involving civil monetary penalties, for determining the amount of any civil monetary penalty.

On September 8, 2008, OFAC published an interim final rule (73 FR 51933) setting forth Economic Sanctions Enforcement Guidelines as enforcement guidance for persons subject to the requirements of U.S. sanctions statutes, Executive orders, and regulations. The Guidelines set forth in the interim final rule superseded the enforcement procedures for banking institutions set forth in the interim final rule of January 12, 2006, which was withdrawn, as well as the proposed guidelines set forth in the proposed rule of January 29, 2003, which was also withdrawn, with the exception of the Cuba Penalty Schedule. (Those withdrawn enforcement procedures and guidelines continue to apply to the categories of cases identified in, and as provided in, OFAC's November 27, 2007 Civil Penalties—Interim Policy and OFAC's October 28, 2008 Civil Penalties—Revised Interim Policy, both of which are available on OFAC's Web site, *http://www.treas.gov/ofac.* Those Interim Policies provide that the withdrawn enforcement procedures generally apply to cases (a) in which a Pre-Penalty Notice was mailed before October 16, 2007, when the Enhancement Act became law; (b) where a tentative settlement amount had been communicated and memorialized; (c) where a party agreed to a tolling or waiver of the statute of limitations, which otherwise would have expired before October 16, 2007; and (d) in which a Pre-Penalty Notice was mailed, or a settlement tentatively reached, prior to the September 8, 2008, publication of the interim final rule.) In all cases in which a Pre-Penalty Notice has been issued prior to the publication of this final rule, the case will continue to be processed in accordance with the enforcement guidelines pursuant to which such Pre-Penalty Notice was issued. The interim final rule also solicited comments on the Guidelines set forth therein.

OFAC hereby publishes an amended version of the Enforcement Guidelines as a final rule. These Enforcement Guidelines are published as an Appendix to the Reporting, Procedures and Penalties Regulations, 31 CFR part 501. Except as noted above, the Guidelines set forth herein are applicable to all persons subject to any of the sanctions programs administered by OFAC. The Guidelines set forth in this final rule are not applicable to penalty or enforcement actions by other agencies based on the same underlying course of conduct, the disposition of goods seized by Customs and Border Protection, or the release of blocked property by OFAC.

The Guidelines set forth in this final rule are applicable to all enforcement matters currently pending before OFAC or that will come before OFAC in the future, whether such matters fall under IEEPA or any of the other statutes pursuant to which OFAC is authorized to enforce sanctions (including, but not limited to, the Trading With the Enemy Act), with the exception of those categories of cases set forth in OFAC's November 27, 2007 Civil Penalties—Interim Policy and OFAC's October 28, 2008 Civil Penalties—Revised Interim Policy. The Guidelines reflect the factors that OFAC will consider in determining the appropriate enforcement response to an apparent violation of an OFAC sanctions program, and those factors are consistent across programs. The civil penalty provisions of the Guidelines take into account the maximum penalties available under the various statutes pursuant to which OFAC is authorized to enforce its sanctions programs.

Summary of Comments

OFAC received eleven sets of comments on the interim final rule, from the following organizations: The American Bar Association, the Association of Corporate Credit Unions, the American Insurance Association, the British Bankers' Association, the Clearing House Association, the Credit Union National Association, the Industry Coalition on Technology Transfer, the Institute of International

[1] Public Law 110–96, 121 Stat. 1011 (October 16, 2007) (amending 50 U.S.C. 1705).

[2] 50 U.S.C. 1701–06.

Bankers, the National Foreign Trade Council, the Securities Industry and Financial Markets Association, and a joint submission from the American Bankers Association and the Bankers Association for Finance and Trade.[3]

Eight comments addressed the definition of voluntary self-disclosure. Although the final rule slightly amends this definition, it does not do so in the ways suggested by the comments. Six comments questioned a perceived move away from risk-based compliance, based on OFAC's withdrawal of the 2006 interim final rule setting forth Economic Sanctions Enforcement Procedures for Banking Institutions, and the risk matrices that were issued as an annex to that interim final rule. In response, OFAC is reissuing a slightly edited and consolidated risk matrix as an annex to the Enforcement Guidelines and clarifying that the adequacy of a Subject Person's risk-based compliance program will be considered among the General Factors considered by OFAC. Five comments noted that OFAC should not consider a Subject Person's entering into or refusing to enter into an agreement tolling the statute of limitations in an assessment of the Subject Person's cooperation with OFAC. In response, OFAC is amending the Guidelines to make clear that while entering into a tolling agreement may be a basis for mitigating the enforcement response or lowering the penalty amount, a Subject Person's refusal to enter into such an agreement will not be considered against the Subject Person. Two comments simply commended OFAC on the Guidelines. Other comments addressed other aspects of the Guidelines.

Specific Responses to Comments

The comments received, OFAC's response to those comments, and OFAC's revisions to the Guidelines in response to the comments are summarized below.

1. Voluntary Self-disclosure

a. *Third-Party Notifications.* Many of the comments that addressed the definition of voluntary self-disclosure expressed concern about the interim final rule definition's exclusion of apparent violations where ''a third party is required to notify OFAC of the apparent violation or a substantially similar apparent violation because a transaction was blocked or rejected by that third party (regardless of whether or when OFAC actually receives such notice from the third party and regardless of whether the Subject Person was aware of the third party's disclosure).'' The comments argued that the definition should not exclude such self-initiated notifications to OFAC, and that OFAC should focus instead on the good faith of the party making the disclosure, regardless of whether another party was obligated to report the apparent violation. The comments argued that broadening the definition of voluntary self-disclosure will benefit OFAC by encouraging such disclosures and providing OFAC with additional information regarding apparent violations.

OFAC has considered these comments but believes that the recommended alternative approach would be difficult to administer in a meaningful manner. Accordingly, OFAC has determined to maintain the exclusion for apparent violations that a third party is required to and does report to OFAC as a result of the third party having blocked or rejected a transaction in accordance with OFAC's regulations. The purpose of mitigating the enforcement response in voluntary self-disclosure cases is to encourage the notification to OFAC of apparent violations of which OFAC would not otherwise have learned. In those cases where a third party is required to, and does, report an apparent violation to OFAC, OFAC is aware of the violation and there is no need to provide incentives for such notification. In addition, OFAC's administrative subpoena authority, 31 CFR 501.602, generally provides the basis for OFAC to require the production of whatever additional information it may require to assess its enforcement response to the apparent violation. In those cases, therefore, there is no need to further incentivize disclosure to OFAC. Moreover, OFAC believes that the ''good faith'' standard suggested in the comments would be administratively unworkable, as OFAC would be unable to ascertain the good or bad faith of Subject Persons making disclosures of apparent violations. A bright line rule generally defining a voluntary self-disclosure based on whether OFAC would otherwise have learned of the apparent violation is more readily administrable.

Consistent with the premise that in those cases where OFAC would otherwise not have learned of the apparent violation a notification to OFAC should be deemed a voluntary self-disclosure, and in response to the suggestion made in one comment, OFAC is amending this aspect of the definition of ''voluntary self-disclosure'' by deleting the words ''whether or'' from that part of the definition in the interim final rule that provided that notification to OFAC of an apparent violation would not be considered a voluntary self-disclosure ''regardless of whether or when OFAC actually receives such notice from the third party * * *.'' Thus, the final rule provides that such notifications shall not be considered voluntary self-disclosures ''regardless of when OFAC receives such notice from the third party * * *.'' The change is intended to make clear that in the event that a third party that is required to report an apparent violation to OFAC fails to do so, and the Subject Person notifies OFAC of the apparent violation in a manner otherwise consistent with a voluntary self-disclosure, the notification will be considered a voluntary self-disclosure. In those cases where the third party does notify OFAC before a final enforcement response to the apparent violation, the Subject Person's notification will not be considered a voluntary self-disclosure even if the Subject Person's notification precedes the third party's notification. This is consistent with the notion that voluntary self-disclosure does not apply where OFAC would have learned of the apparent violation in any event—in this case, from the subsequent required disclosure by the third party.

Interestingly, different industry sectors all commented that this provision of the definition would unfairly target their industry. Thus, the banking industry commented that financial institutions are disproportionately affected by this exclusion, a trade group commented that this exclusion ''define[s] the entire import-export sector out of'' the definition, and the securities industry commented that as a result of this exclusion most filings by securities firms would not be considered voluntary self-disclosures. The fact that these different industries believe that the definition unfairly targets them weakens the force of the argument as to each. In any event, the argument does not address the underlying basis for the rule: The purpose of treating certain notifications as voluntary self-disclosures is to bring to OFAC's attention apparent violations of which it otherwise would not have learned.

OFAC stresses that the final rule provides (as did the interim final rule), that ''[i]n cases involving substantial cooperation with OFAC but no voluntary self-disclosure as defined herein, including cases in which an apparent violation is reported to OFAC by a third party but the Subject Person provides substantial additional

[3] Several of the comments were received after the November 7, 2008, deadline for submission of comments. Those comments are nevertheless addressed herein.

information regarding the apparent violation and/or other related violations, the base penalty amount generally will be reduced between 25 and 40 percent.'' In addition, a Subject Person's cooperation with OFAC—including whether the Subject Person provided OFAC with all relevant information regarding an apparent violation (whether or not voluntarily self-disclosed), and whether the Subject Person researched and disclosed to OFAC relevant information regarding any other apparent violations caused by the same course of conduct—is a General Factor to be considered in assessing OFAC's enforcement response to the apparent violation. These provisions are intended to reward voluntary disclosures of all relevant information and address the concerns raised by the comments. The provisions make clear that a Subject Person's cooperation with OFAC can have a substantial impact on the nature of OFAC's enforcement response to an apparent violation, even in cases that do not meet the definition of ''voluntary self-disclosure'' set forth in the final rule.

Several comments noted that failure to treat self-initiated notifications to OFAC in the circumstances discussed above as voluntary self-disclosures causes unwarranted reputational harm to the institutions involved. OFAC does not believe that this concern provides a sufficient basis to alter the definition of voluntary self-disclosure discussed above. In response to this comment, OFAC has amended the final rule to expressly provide that, where appropriate, substantial cooperation by a Subject Person in OFAC's investigation will be publicly noted.

b. *Material Completeness.* Several comments also suggested that the definition's exclusion of disclosures that are materially incomplete is unfair because a party may not have had time to complete its investigation or access supplementary material before OFAC learns of an apparent violation from another source. The definition of voluntary self-disclosure set forth in the interim final rule, and retained in this final rule, excludes only those notifications where ''the disclosure (*when considered along with supplemental information provided by the Subject Person*) is materially incomplete'' (emphasis added). Similarly, the definition provides that ''[i]n addition to notification, a voluntary self-disclosure must include, *or be followed within a reasonable period of time by,* a report of sufficient detail to afford a complete understanding of an apparent violation's circumstances, and should also be followed by responsiveness to any follow-up inquiries by OFAC.'' (emphasis added). The definition thus expressly contemplates that a Subject Person may notify OFAC of an apparent violation before it has completed its investigation or accessed all of the supplementary material necessary for a complete disclosure. So long as that information is provided to OFAC within a reasonable period of time after the initial notification of the apparent violation, and assuming the other aspects of the definition are met, the disclosure would still constitute a voluntary self-disclosure. OFAC therefore concludes that this aspect of the definition already accommodates these comments and does not need to be changed.

c. *Good Faith.* OFAC likewise has considered and rejected the suggestion that the definition of voluntary self-disclosure not exclude disclosures that include false or misleading information or that are made without management authorization, when the disclosure is made in good faith. As noted above, the good faith standard is not readily administrable. OFAC believes that disclosures that contain false or misleading information should not receive the substantial benefit accorded to voluntary self-disclosures. In such cases, OFAC will consider the totality of the circumstances in determining whether the false or misleading information warrants negation of a finding of voluntary self-disclosure. When the Subject Person is an entity, disclosures made without the authorization of the entity's senior management do not reflect disclosure by the entity but rather by a third party. A finding of voluntary self-disclosure by the Subject Person is not warranted in whistleblower cases. Nor does OFAC believe that a whistleblower should be required to first notify the entity's senior management, as one comment suggested.

d. *Regulatory Suggestion.* One comment suggested that OFAC delete the word ''suggestion'' from that part of the definition of voluntary self-disclosure that excludes a disclosure that ''is not self-initiated (including when the disclosure results from a suggestion or order of a federal or state agency or official),'' on the ground that the term ''suggestion'' produces a subjective standard. While OFAC recognizes the concern expressed in the comment, in many instances federal or state regulators do not formally order institutions to report an apparent violation to OFAC. The use of the phrase ''suggestion'' in this context is intended to capture those instances in which a Subject Person's regulator, or another government agency or official, directs, instructs, tells, or otherwise suggests to the Subject Person that it notify OFAC of the apparent violation. In such cases, the notification to OFAC by the Subject Person is not properly considered self-initiated and OFAC likely would have learned of the apparent violation from the other government agency or official in the event that the Subject Person did not itself notify OFAC.

e. *Timing of Notification.* OFAC has also considered the comment that offered an alternative definition of voluntary self-disclosure that would have treated as a voluntary self-disclosure any notification to OFAC of an apparent violation prior to the time that OFAC issued a Pre-Penalty Notice, and suggested other changes to the definition. OFAC does not believe that the suggested changes are warranted. A Pre-Penalty Notice is typically issued once OFAC has completed an investigation into an apparent violation, and such investigation often involves the issuance of administrative subpoenas to the Subject Person. Affording voluntary self-disclosure credit to disclosures made after the issuance of such a subpoena would reward Subject Persons who did not disclose the apparent violation to OFAC until after OFAC had learned of it from other sources, and it would not accord with the purpose of mitigating the enforcement response in voluntary self-disclosure cases, which is to encourage the notification to OFAC of apparent violations of which OFAC would not otherwise have learned.

f. *Suspicious Activity Report Filing.* One comment asked that OFAC clarify that the filing of a Suspicious Activity Report (SAR) by a Subject Person pursuant to the Bank Secrecy Act has no impact on whether a subsequent notification to OFAC of an apparent violation, presumably based on the same transaction that is the subject of the SAR, constitutes a voluntary self-disclosure. The filing of a SAR does not itself preclude a determination of voluntary self-disclosure for a subsequent self-disclosure to OFAC of the same transaction, except to the extent that OFAC has learned of the apparent violation prior to the filing of the self-disclosure.

g. *What to Report.* One comment requested clarification regarding the circumstances in which the mere possibility that a violation exists should cause an institution to make a voluntary self-disclosure. The comment noted that the alleged uncertainty surrounding this

issue creates a strong incentive for an institution to err on the side of reporting transactions that likely do not constitute a violation. OFAC does not believe that additional guidance is necessary or warranted. The Guidelines define an ''apparent violation'' as an actual or possible violation of U.S. economic sanctions laws, and they define a voluntary self-disclosure as a self-initiated notification to OFAC of an apparent violation (subject to the other provisions of the definition). The Subject Person determines whether to report an apparent violation to OFAC. Such a notification to OFAC need not constitute an admission that the conduct at issue actually constitutes a violation in order to be considered a voluntary self-disclosure. To the extent that the Guidelines as written provide an incentive for ''over-reporting'' to OFAC of possible violations, OFAC does not view that as a problem that needs to be addressed. To the contrary, OFAC would prefer that Subject Persons report a transaction or conduct that is ultimately determined to not be a violation, rather than that they elect not to report conduct that does constitute a violation.

h. *Other OFAC Modifications.* Finally, OFAC has made two additional changes to the definition of voluntary self-disclosure. The first change is to make clear that a self-initiated notification to OFAC that is made at the same time as another government agency learns of the apparent violation (through the Subject Person's disclosure to that other agency or otherwise) does qualify as a voluntary self-disclosure if the other aspects of the definition are met. This change is intended to cover voluntary self-disclosures made simultaneously to OFAC and another government agency. OFAC has thus substituted the phrase ''prior to or at the same time'' for the phrase ''prior to'' in the operative sentence of the definition, which now reads:

''*Voluntary self-disclosure* means self-initiated notification to OFAC of an apparent violation by a Subject Person that has committed, or otherwise participated in, an apparent violation of a statute, Executive order, or regulation administered or enforced by OFAC, prior to or at the same time that OFAC, or any other federal, state, or local government agency or official, discovers the apparent violation or another substantially similar apparent violation.''

OFAC has also added the following sentence to the definition of voluntary self-disclosure:

''Notification of an apparent violation to another government agency (but not to OFAC) by a Subject Person, which is considered a voluntary self-disclosure by that agency, may be considered a voluntary self-disclosure by OFAC, based on a case-by-case assessment of the facts and circumstances.''

This is intended to clarify that OFAC may treat a voluntary self-disclosure to another government agency as a voluntary self-disclosure to OFAC when the circumstances so warrant.

2. Risk-Based Compliance

Six comments questioned whether OFAC intended to move away from the risk-based compliance approach reflected in the 2006 Economic Sanctions Enforcement Procedures for Banking Institutions, which, along with their appended risk matrices, were withdrawn by the interim final rule. In no way has OFAC moved away from considering an institution's risk-based compliance program in assessing the appropriate enforcement response to an apparent violation. The final rule clarifies this by making explicit reference to risk-based compliance in its discussion of General Factor E, which focuses on a Subject Person's compliance program, and by re-promulgating with minor edits and in consolidated form, as an annex to the final rule, the risk matrices that had originally been promulgated as an annex to the 2006 Enforcement Procedures. By these changes, OFAC intends to reflect that it will continue to apply the same risk-based principles it has been applying in assessing the overall adequacy of a Subject Person's compliance program.

Two comments argued that in the case of banks, OFAC's focus should be more narrowly focused on the bank's fault or the nature of its compliance program. OFAC has considered these comments, but believes that all of the General Factors are as applicable to banks as they are to other Subject Persons. Those Factors account for both fault and the nature and existence of a compliance program, but they also account for other criteria that are relevant to a determination of an appropriate enforcement response to an apparent violation. For example, the degree of harm caused by an apparent violation is as relevant and important a factor to consider in cases involving banks as it is in other cases. OFAC thus disagrees with the comment that asserted that less weight should be afforded to the harm to sanctions programs objectives and a greater emphasis placed on risk-based compliance. The harm to sanctions program objectives is as valid and relevant a consideration as an institution's risk-based compliance program, and the Final Guidelines appropriately account for consideration of both factors.

One comment expressed concern about the absence of a process to periodically evaluate an institution's violations in the context of its overall OFAC compliance program and OFAC compliance record. The Guidelines, however, expressly provide for consideration of both an institution's OFAC compliance program and its overall compliance record over time in a number of places. For example, the Guidelines provide for consideration of a Subject Person's compliance program in General Factor E, which, as noted above, has been clarified to make explicit reference to risk-based compliance. The Guidelines also provide that in considering the individual characteristics of a Subject Person (General Factor D), OFAC will consider ''[t]he total volume of transactions undertaken by the Subject Person on an annual basis, with attention given to the apparent violations as compared with the total volume.'' This provision of the Guidelines is intended to allow for the consideration of any apparent violation in the context of a Subject Person's overall compliance record.

Another comment addressing risk-based compliance asserted that the Guidelines reflect ''OFAC's stated intention to apply penalties on every erroneous transaction.'' The Guidelines do not so state; to the contrary, they expressly note that ''OFAC will give careful consideration to the appropriateness of issuing a cautionary letter or Finding of Violation in lieu of the imposition of a civil monetary penalty.'' Another comment suggested that OFAC should state that it will not assess penalties based on minor or isolated compliance deficiencies. OFAC believes that the process set forth in the Guidelines for determining its enforcement response to an apparent violation is appropriate and that it would not be appropriate to make broader, categorical statements of its enforcement policy based on the minor or isolated nature of an apparent violation. The General Factors already account for the consideration of the minor or isolated nature of an apparent violation in determining whether a civil monetary penalty is warranted.

3. Cooperation and Tolling Agreements

Five comments argued that OFAC should not consider whether a Subject Person agreed to waive the statute of limitations or enter into a tolling agreement in assessing the Subject Person's cooperation with OFAC. The comments argued that it was unfair and contrary to public policy to consider this as a factor. One comment suggested

that the provision should either be dropped or its consideration limited to cases where late discovery by or notification to OFAC threatens resolution within the five year statute of limitations period and that tolling agreements should be limited to extending the period for no more than five years from discovery of the apparent violation by OFAC.

OFAC has carefully considered these comments. The interim final rule addressed both waivers of the statute of limitations and tolling agreements. It is not OFAC's general practice to seek outright waivers of the statute of limitations, and the final rule eliminates any reference to statute of limitations waivers.

OFAC agrees that a Subject Person's refusal to enter into a tolling agreement should not be considered an aggravating factor in assessing a Subject Person's cooperation or otherwise. At the same time, a tolling agreement can be of significant value to OFAC, especially in cases where OFAC does not learn of an apparent violation at or near the time it occurs, in particularly complex cases, or in cases in which a Subject Person has requested and received additional time to respond to a request for information from OFAC. Accordingly, OFAC believes it appropriate to consider a Subject Person's entering into a tolling agreement in a positive light and as a basis for mitigating the enforcement response or lowering the penalty amount. The final rule thus clarifies that while a Subject Person's willingness to enter into a tolling agreement may be considered a mitigating factor, a Subject Person's unwillingness to enter into such an agreement will not be considered against the Subject Person.

4. Penalty Calculation

Two comments addressed the calculation of the base penalty amount under the Guidelines.

a. *Disparity in Base Penalty Amounts.* One comment suggested that the applicable schedule amounts, which are applicable to cases involving non-egregious apparent violations that are not voluntarily self-disclosed to OFAC, be changed to lessen the disparity in the base penalty amount between such cases and non-egregious cases that are voluntarily self-disclosed.[4] OFAC has considered this suggestion but believes that the applicable schedule amounts, which provide for a gradated series of penalties based on the underlying transaction value, reflect an appropriate starting point for the penalty calculation in non-egregious cases not involving a voluntary self-disclosure. As currently structured, the base penalty calculation ensures that the base penalty for a voluntarily self-disclosed case will always be one-half or less than one-half of the base penalty for a similar case that is not voluntarily self-disclosed. This is intended to serve as an additional incentive for voluntary self-disclosure.

b. *Other Penalty Issues.* A second comment made a number of suggestions regarding the penalty calculation. OFAC has considered each of these suggestions, which are discussed below.

i. *Egregious Cases.* First, this comment suggested that OFAC reduce the base penalty amount for egregious cases by 50 percent and clarify the extent to which that amount may be increased by aggravating factors. Reducing the base penalty amount for egregious cases would not adequately reflect the seriousness with which OFAC views such cases. As set forth in the preamble to the interim final rule, OFAC anticipates that the majority of enforcement cases will fall in the non-egregious category.

ii. *Specified Reduction for Remediation.* Second, this comment suggested that OFAC provide for remedial measures as a mitigating factor and state the extent to which such actions generally will reduce the base penalty amount (*e.g.,* 10–25%). The Guidelines expressly recognize a Subject Person's remedial response as one of the General Factors OFAC will consider in determining its enforcement response to an apparent violation. OFAC does not believe it appropriate to identify a specific range of mitigation for remedial measures, which can vary widely in their nature and scope. The Guidelines envision a holistic examination of the facts and circumstances surrounding an apparent violation in determining a proposed penalty amount. With the exception of first offenses and substantial cooperation, OFAC does not believe it appropriate to provide a specified mitigation percentage for the existence of potentially mitigating factors.

iii. *Specified Reduction for Cooperation.* Third, the comment suggested that OFAC specify that substantial cooperation in voluntary self-disclosure cases would reduce the base penalty amount by 25% to 40% (as would occur in cases that do not involve a voluntary self-disclosure). This suggestion appears to misapprehend the purpose of the provision of the Guidelines that provides for such a reduction in non-voluntarily self-disclosed cases. The reduction in the base penalty amount for cases involving substantial cooperation but no voluntary self-disclosure is intended to approximate the significant mitigation provided for voluntary self-disclosure cases in the base penalty amount itself. This reduction is intended to afford parties whose conduct was reported to OFAC by others (for example, through a blocking or reject report) the opportunity to obtain, by providing substantial cooperation, much (but not all) of the benefit they would have obtained had they voluntarily self-disclosed the apparent violation. Subject Persons who have voluntarily self-disclosed their apparent violations to OFAC are already benefiting from a significantly reduced base penalty amount. Moreover, a voluntary self-disclosure must include, or be followed within a reasonable period of time by, a report of sufficient detail to afford a complete understanding of an apparent violation's circumstances, and should also be followed by responsiveness to any follow-up inquiries by OFAC. OFAC recognizes that in some instances an additional reduction in the base penalty amount based on substantial cooperation may be warranted in cases involving voluntary self-disclosure, but that additional reduction may be less than 25 to 40 percent.

iv. *Specified Additional Adjustments.* Fourth, the comment suggested that OFAC specify that further adjustments to the base penalty amount may be made depending on the relevance of the other General Factors, including in particular the existence and nature of a compliance program and permissibility of the conduct under applicable foreign law. The Guidelines already expressly provide that the base penalty amount may be adjusted to reflect applicable General Factors, including the existence and nature of a compliance program. The suggestion that the penalty be adjusted in light of the permissibility of the conduct under applicable foreign law is addressed below under the heading ''Compliance With Foreign Law.''

v. *Emphasize Number vs. Value of Transactions.* Fifth, the comment suggested that OFAC clarify that when considering ''apparent violations as compared with the total volume'' of transactions undertaken by a Subject Person, the focus will be on the number rather than the value of transactions. OFAC does not believe that such a clarification is warranted. While in many cases the overall number of transactions, as compared to the number of apparent violations, will be the

[4] The base penalty amount for a non-egregious case involving a voluntary self-disclosure equals one-half of the transaction value, capped at $125,000 for an apparent violation of IEEPA and $32,500 for an apparent violation of TWEA.

appropriate measure of a Subject Person's overall compliance program, there may be cases where the relative value of the transactions is the more appropriate metric. OFAC will address this issue on a case-by-case basis, as appropriate.

vi. *First Violations.* Finally, the comment suggested that OFAC clarify that, for purposes of the reduction of the penalty amount by up to 25% for cases involving a Subject Person's first violation, OFAC will consider the entire set of ''substantially similar violations'' at issue in a case as a single ''first violation,'' and thus provide the penalty reduction for all transactions at issue, and not just for the first of the substantially similar violations. OFAC intends that in enforcement cases addressing a set of ''substantially similar violations,'' the penalty reduction for a Subject Person's first violation will generally apply to the entire set of ''substantially similar violations'' and not solely to the first of those violations. OFAC has added the following sentence to the final rule to clarify this: ''A group of substantially similar apparent violations addressed in a single Pre-Penalty Notice shall be considered as a single violation for purposes of this subsection.'' In addition, OFAC has clarified that an apparent violation generally will be considered a ''first violation'' if the Subject Person has not received a penalty notice or Finding of Violation from OFAC in the five years preceding the date of the transaction giving rise to the apparent violation, and that in those cases where a prior penalty notice or Finding of Violation within the preceding five years involved conduct of a substantially different nature from the apparent violation at issue, OFAC may still consider the apparent violation at issue a ''first violation.''

5. General Factors

A number of comments either identified additional proposed General Factors that OFAC should consider or suggested the deletion of General Factors as inappropriate for OFAC's consideration.

a. *Compliance With Foreign Law.* Two comments suggested that, in cases concerning conduct occurring outside the United States, OFAC should consider whether the conduct in question is permissible under the applicable law of another jurisdiction. OFAC does not agree that the permissibility of conduct under the applicable laws of another jurisdiction should be a factor in assessing an apparent violation of U.S. laws. In cases where the applicable laws of another jurisdiction require conduct prohibited by OFAC sanctions (or vice versa), OFAC will consider the conflict under General Factor K, which provides for the consideration of relevant factors on a case-by-case basis. OFAC notes that Subject Persons can seek a license from OFAC to engage in otherwise prohibited transactions and that the absence of such a license request will be considered in assessing an apparent violation where conflict of laws is raised by the Subject Person.

b. *Reliance on Advice from OFAC.* Three comments suggested that OFAC should explicitly state that good faith reliance on advice from the OFAC hotline (two comments) or on a reasoned analysis of OFAC regulations with the assistance of private counsel (one comment) should be considered in assessing an appropriate enforcement response. Subject Persons are encouraged to seek written guidance from OFAC on complex matters for the sake of clarity. Good faith reliance on substantiated advice received from the OFAC hotline or from counsel is subsumed within OFAC's consideration of whether a Subject Person willfully or recklessly violated the law.

c. *Relevance of Future Compliance/Deterrence.* One comment suggested that OFAC should eliminate General Factor J, which focuses on the impact that administrative action may have on promoting future compliance with U.S. economic sanctions by the Subject Person and similar Subject Persons, arguing that OFAC's enforcement response should focus solely on the Subject Person's culpability. OFAC rejects this argument, as the purpose of enforcement action includes raising awareness, increasing compliance, and deterring future violations, and not merely punishment of prior conduct.

d. *Reason to Know.* One comment suggested that OFAC should eliminate the ''reason to know'' provision of General Factor B, which focuses on the Subject Person's awareness of the conduct giving rise to the apparent violation. OFAC rejects this suggestion as it would invite Subject Persons to act with willful blindness. OFAC believes the ''reason to know'' formulation is consistent with general legal principles and appropriate for consideration.

e. *Responsibility for Employees.* One comment suggested that OFAC should make clear that actions of ''rogue employees,'' including supervisors or managers, will not be attributed to organizations so long as a reasonable compliance program was in place. OFAC rejects this suggestion. The actions of employees may be properly attributable to their organizations, depending on the facts and circumstances of the particular case. Among the factors OFAC will consider in determining whether such actions are attributable to an organization are the position of the employee in question, the nature of the conduct (including how long it lasted), who else was or should have been aware of the conduct, and the existence and nature of a compliance program intended to identify and stop such conduct.

f. *Sanctions History.* One comment suggested that cautionary letters, warning letters, and evaluative letters should not be considered when assessing a Subject Person's sanctions violations history. OFAC believes that such prior letters are appropriate to consider in determining an appropriate enforcement response. In addition, such letters evidence the Subject Person's awareness of OFAC sanctions generally. OFAC has amended the final rule to refer to ''sanctions history'' instead of ''sanctions violations history'' to make clear that consideration is not limited to prior formal determinations of sanctions violations.

OFAC has also amended the final rule to note that, as a general matter, consideration of a Subject Person's sanctions history will be limited to the five years preceding the transaction giving rise to the apparent violation. As explained above, a five-year limitation has also been incorporated into the provision providing that in cases involving a Subject Person's first violation, the base penalty amount generally will be reduced up to 25 percent, so that ''first violation'' is understood as the first violation in the five years preceding the transaction giving rise to the apparent violation. In certain cases, however, such as those involving enforcement responses to substantially similar apparent violations, it may be appropriate to consider sanctions history outside the five-year period.

g. *Transition Period for Foreign Acquisitions.* One comment suggested that the Guidelines should provide a transition period for cases in which a Subject Person acquires an entity outside the United States not previously subject to OFAC requirements. OFAC does not believe that such a provision is warranted. U.S. persons acquiring entities outside the United States should consider OFAC compliance as part of their due diligence review of the acquisition.

6. Provision of Information to OFAC

Four comments focused on possible impediments to fully complying with an OFAC request for information. Three of

these comments raised concerns about foreign laws that may prohibit the provision of requested information to OFAC. OFAC does not believe that these comments warrant a change to the text of the interim final rule. As discussed above with respect to conflict-of-laws situations, OFAC will give due consideration to applicable restrictions of foreign law regarding the provision of information to OFAC on a case-by-case basis. OFAC expects that Subject Persons will provide to OFAC a detailed explanation of any allegedly applicable foreign law and the steps undertaken by the Subject Person to avail themselves of all legal means to provide the requested information.

One comment raised concerns about information protected by the attorney-client privilege or the attorney work product doctrine. OFAC generally does not expect Subject Persons to provide privileged or protected information in response to a request for information or otherwise. OFAC does, however, expect Subject Persons who withhold responsive information on the grounds of the attorney-client or other privilege or the work product doctrine to properly invoke such privilege or protection and to identify such withheld information on a privilege log, in accordance with any instructions accompanying requests for information and ordinary legal practice. OFAC has clarified the provision of the Guidelines providing for penalties for failure to respond to a request for information by eliminating the reference to ''failure to furnish the requested information'' and instead referring to a ''failure to comply'' with a request for information. The revised language is intended to make clear that OFAC will not seek penalties in those cases where responsive information is withheld on the basis of an apparently applicable and properly invoked privilege.

7. Penalty/Finding of Violation Process

Several comments made suggestions regarding OFAC's penalty process. One comment suggested that OFAC should offer Subject Persons a meeting before issuing a Pre-Penalty Notice, and another comment suggested that OFAC provide a process by which to appeal a final enforcement decision. OFAC does not believe that the adoption of either suggestion is warranted. In most cases, OFAC will have communicated with the Subject Person (by means of issuing a request for information or receiving a disclosure) prior to issuance of the Pre-Penalty Notice. Moreover, the Pre-Penalty Notice does not constitute final agency action and specifically affords a Subject Person the opportunity to respond to the allegations and proposed penalty set forth therein with additional information or argument.

OFAC also does not believe that an administrative appeal process is warranted. In cases involving civil monetary penalties, the Pre-Penalty Process just described affords a Subject Person sufficient opportunity to present its case to OFAC before a Penalty Notice is issued. In cases involving a Finding of Violation, the Guidelines provide that a Finding of Violation will afford the Subject Person an opportunity to respond to OFAC's determination that a violation has occurred before the finding is made final. No other actions by OFAC constitute formal determinations of violation, and no administrative appeal process is therefore necessary in such cases.[5]

8. Other Comments

One comment suggested that OFAC should be sensitive to the views of non-U.S. regulators. The Guidelines explain that OFAC may seek information from a regulated institution's foreign regulator, and may take into account the views of a foreign regulator with respect to a Subject Person's compliance program where relevant. Nor do the Guidelines preclude other consideration of foreign regulators' views. Accordingly, OFAC believes that no additional changes are necessary in this regard.

One comment suggested that the definition of ''transaction value'' needs clarification because it does not allocate responsibility in multiparty transactions, and this comment suggested certain edits to the definition with the goal of clarifying that transaction value will be determined based on a Subject Person's role in the transaction. OFAC has considered this comment but determined that no change is needed to the definition of transaction value. The current definition provides sufficient flexibility to allow for the determination of an appropriate transaction value in a wide variety of circumstances, including multiparty transactions where the differing roles of the parties may result in differing transaction values.

One comment suggested that there should be two sets of guidelines, one for financial institutions and one for entities focused on trade in goods, arguing that these types of entities maintain different business models. OFAC considered such an approach when developing the Guidelines, but determined that a single set of Guidelines, providing general factors and sufficient flexibility, was a better approach. The Guidelines as crafted do not dictate a particular outcome in any particular case, but rather are intended to identify those factors most relevant to OFAC's enforcement decision and to guide the agency's exercise of its discretion. Because the General Factors are equally applicable to all sectors, and because the Guidelines provide sufficient flexibility to allow for the consideration of the factors most relevant to a particular Subject Person, OFAC does not believe that particularized sets of Guidelines for particular business models are warranted or necessary.

OFAC Edits

In addition to the changes made in response to public comments and the additional changes to the definition of voluntary self-disclosure described above, OFAC has made several other changes to the Guidelines. First, OFAC has clarified the base penalty amounts for transactions subject to the Trading With the Enemy Act (TWEA), which presently has a $65,000 statutory maximum penalty. In non-egregious cases involving apparent violations of TWEA, where the apparent violation is disclosed through a voluntary self-disclosure by the Subject Person (*i.e.,* Box ''1'' on the penalty matrix), the base amount of the proposed civil penalty shall be capped at a maximum of $32,500 per violation. This correction is necessary to ensure that in such cases the base amount of the proposed civil penalty is no more than one-half the base penalty amount for a similar transaction that is not voluntarily self-disclosed.

OFAC is also clarifying that for non-egregious transactions under TWEA that are not voluntarily self-disclosed, the base amount of the civil penalty shall be capped at $65,000. The Guidelines already provide for this by capping base penalty amounts at the applicable statutory maximum; this change is intended simply to clarify this point. Similarly, OFAC is clarifying that, in egregious cases, the base penalty calculation will be based on the ''applicable'' statutory maximum, in an effort to signal that the base penalty in such cases will differ for transactions under IEEPA (where the statutory maximum equals the greater of $250,000 or an amount that is twice the value of the transaction), TWEA (where the statutory maximum equals $65,000), or other applicable statutes.

[5] The Trading With the Enemy Act and its implementing regulations, 31 CFR part 501, subpart D, provide for Administrative Law Judge hearings on penalty determinations. Nothing in the Guidelines affects the applicability of those provisions.

OFAC has also amended the Guidelines to provide for a penalty of up to $50,000 for a failure to maintain records in conformance with the requirements of OFAC regulations. This change is intended to ensure that penalties for a failure to maintain records are commensurate with penalties for a failure to comply with a requirement to furnish information.

The Guidelines are also amended to make clear that for apparent violations identified in the Cuba Penalty Schedule, 68 FR 4422, 4429 (Jan. 29, 2003), for which a civil monetary penalty has been deemed appropriate, the base penalty amount shall equal the amount set forth in the Schedule for such a violation, except that the base penalty amount shall be reduced by 50% in cases of voluntary self-disclosure. This is intended to clarify the interplay between the penalty amounts set forth in the Cuba Penalty Schedule and the base penalty calculation process set forth in the Guidelines.

OFAC has eliminated the reference to the Cuba Travel Service Provider Circular in Part IV of the Guidelines, as that Circular has been amended to include a reference to the Guidelines, which now govern apparent violations by licensed Travel Service Providers.

OFAC has also changed references to ''conduct, activity, or transaction'' to ''conduct'' throughout the Guidelines. This change is not intended to have substantive effect, but rather to provide greater consistency in terminology within the Guidelines. OFAC understands the term ''conduct'' to encompass ''activities'' and ''transactions,'' and notes the definition of an ''apparent violation'' is based on the term ''conduct.''

Finally, in General Factor H, concerning the timing of the apparent violation in relation to the imposition of sanctions, OFAC has changed the word ''soon'' to ''immediately'' so that the relevant provision reads: ''the timing of the apparent violation in relation to the adoption of the applicable prohibitions, particularly if the apparent violation took place immediately after relevant changes to the sanctions program regulations or the addition of a new name to OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List).'' This change is intended to more accurately reflect the purpose of General Factor H and to convey that mitigation as a result of changes to sanctions program regulations or additions to the SDN List is unlikely to be applicable other than in the time period immediately following such changes or additions.

List of Subjects in 31 CFR Part 501

Administrative practice and procedure, Banks, Banking, Insurance, Money service business, Penalties, Reporting and recordkeeping requirements, Securities.

■ For the reasons set forth in the preamble, 31 CFR part 501 is amended as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 22 U.S.C. 2370(a), 6009, 6032, 7205; 28 U.S.C. 2461 note; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

■ 2. Part 501 is amended by revising Appendix A to Part 501 to read as follows:

Appendix A to Part 501—Economic Sanctions Enforcement Guidelines.

Note: This appendix provides a general framework for the enforcement of all economic sanctions programs administered by the Office of Foreign Assets Control (OFAC).

I. Definitions

A. *Apparent violation* means conduct that constitutes an actual or possible violation of U.S. economic sanctions laws, including the International Emergency Economic Powers Act (IEEPA), the Trading With the Enemy Act (TWEA), the Foreign Narcotics Kingpin Designation Act, and other statutes administered or enforced by OFAC, as well as Executive orders, regulations, orders, directives, or licenses issued pursuant thereto.

B. *Applicable schedule amount* means:

1. $1,000 with respect to a transaction valued at less than $1,000;
2. $10,000 with respect to a transaction valued at $1,000 or more but less than $10,000;
3. $25,000 with respect to a transaction valued at $10,000 or more but less than $25,000;
4. $50,000 with respect to a transaction valued at $25,000 or more but less than $50,000;
5. $100,000 with respect to a transaction valued at $50,000 or more but less than $100,000;
6. $170,000 with respect to a transaction valued at $100,000 or more but less than $170,000;
7. $250,000 with respect to a transaction valued at $170,000 or more, except that where the applicable schedule amount as defined above exceeds the statutory maximum civil penalty amount applicable to an apparent violation, the applicable schedule amount shall equal such applicable statutory maximum civil penalty amount.

C. *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

D. *Penalty* is the final civil penalty amount imposed in a Penalty Notice.

E. *Proposed penalty* is the civil penalty amount set forth in a Pre-Penalty Notice.

F. *Regulator* means any Federal, State, local or foreign official or agency that has authority to license or examine an entity for compliance with federal, state, or foreign law.

G. *Subject Person* means an individual or entity subject to any of the sanctions programs administered or enforced by OFAC.

H. *Transaction value* means the dollar value of a subject transaction. In export and import cases, the transaction value generally will be the domestic value in the United States of the goods, technology, or services sought to be exported from or imported into the United States, as demonstrated by commercial invoices, bills of lading, signed Customs declarations, or similar documents. In cases involving seizures by U.S. Customs and Border Protection (CBP), the transaction value generally will be the domestic value as determined by CBP. If the apparent violation at issue is a prohibited dealing in blocked property by a Subject Person, the transaction value generally will be the dollar value of the underlying transaction involved, such as the value of the property dealt in or the amount of the funds transfer that a financial institution failed to block or reject. Where the transaction value is not otherwise ascertainable, OFAC may consider the market value of the goods or services that were the subject of the transaction, the economic benefit conferred on the sanctioned party, and/or the economic benefit derived by the Subject Person from the transaction, in determining transaction value. For purposes of these Guidelines, ''transaction value'' will not necessarily have the same meaning, nor be applied in the same manner, as that term is used for import valuation purposes at 19 CFR 152.103.

I. *Voluntary self-disclosure* means self-initiated notification to OFAC of an apparent violation by a Subject Person that has committed, or otherwise participated in, an apparent violation of a statute, Executive order, or regulation administered or enforced by OFAC, prior to or at the same time that OFAC, or any other federal, state, or local government agency or official, discovers the apparent violation or another substantially similar apparent violation. For these purposes, ''substantially similar apparent violation'' means an apparent violation that is part of a series of similar apparent violations or is related to the same pattern or practice of conduct. Notification of an apparent violation to another government agency (but not to OFAC) by a Subject Person, which is considered a voluntary self-disclosure by that agency, may be considered a voluntary self-disclosure by OFAC, based on a case-by-case assessment. Notification to OFAC of an apparent violation is not a voluntary self-disclosure if: a third party is required to and does notify OFAC of the apparent violation or a substantially similar apparent violation because a transaction was blocked or rejected by that third party (regardless of when OFAC receives such

notice from the third party and regardless of whether the Subject Person was aware of the third party's disclosure); the disclosure includes false or misleading information; the disclosure (when considered along with supplemental information provided by the Subject Person) is materially incomplete; the disclosure is not self-initiated (including when the disclosure results from a suggestion or order of a federal or state agency or official); or, when the Subject Person is an entity, the disclosure is made by an individual in a Subject Person entity without the authorization of the entity's senior management. Responding to an administrative subpoena or other inquiry from, or filing a license application with, OFAC is not a voluntary self-disclosure. In addition to notification, a voluntary self-disclosure must include, or be followed within a reasonable period of time by, a report of sufficient detail to afford a complete understanding of an apparent violation's circumstances, and should also be followed by responsiveness to any follow-up inquiries by OFAC. (As discussed further below, a Subject Person's level of cooperation with OFAC is an important factor in determining the appropriate enforcement response to an apparent violation even in the absence of a voluntary self-disclosure as defined herein; disclosure by a Subject Person generally will result in mitigation insofar as it represents cooperation with OFAC's investigation.)

II. Types of Responses to Apparent Violations

Depending on the facts and circumstances of a particular case, an OFAC investigation may lead to one or more of the following actions:

A. *No Action.* If OFAC determines that there is insufficient evidence to conclude that a violation has occurred and/or, based on an analysis of the General Factors outlined in Section III of these Guidelines, concludes that the conduct does not rise to a level warranting an administrative response, then no action will be taken. In those cases in which OFAC is aware that the Subject Person has knowledge of OFAC's investigation, OFAC generally will issue a letter to the Subject Person indicating that the investigation is being closed with no administrative action being taken. A no-action determination represents a final determination as to the apparent violation, unless OFAC later learns of additional related violations or other relevant facts.

B. *Request Additional Information.* If OFAC determines that additional information regarding the apparent violation is needed, it may request further information from the Subject Person or third parties, including through an administrative subpoena issued pursuant to 31 CFR 501.602. In the case of an institution subject to regulation where OFAC has entered into a Memorandum of Understanding (MOU) with the Subject Person's regulator, OFAC will follow the procedures set forth in such MOU regarding consultation with the regulator. Even in the absence of an MOU, OFAC may seek relevant information about a regulated institution and/or the conduct constituting the apparent violation from the institution's federal, state, or foreign regulator. Upon receipt of information determined to be sufficient to assess the apparent violation, OFAC will decide, based on an analysis of the General Factors outlined in Section III of these Guidelines, whether to pursue further enforcement action or whether some other response to the apparent violation is appropriate.

C. *Cautionary Letter:* If OFAC determines that there is insufficient evidence to conclude that a violation has occurred or that a Finding of Violation or a civil monetary penalty is not warranted under the circumstances, but believes that the underlying conduct could lead to a violation in other circumstances and/or that a Subject Person does not appear to be exercising due diligence in assuring compliance with the statutes, Executive orders, and regulations that OFAC enforces, OFAC may issue a cautionary letter, which may convey OFAC's concerns about the underlying conduct and/or the Subject Person's OFAC compliance policies, practices and/or procedures. A cautionary letter represents a final enforcement response to the apparent violation, unless OFAC later learns of additional related violations or other relevant facts, but does not constitute a final agency determination as to whether a violation has occurred.

D. *Finding of Violation:* If OFAC determines that a violation has occurred and considers it important to document the occurrence of a violation and, based on an analysis of the General Factors outlined in Section III of these Guidelines, concludes that the Subject Person's conduct warrants an administrative response but that a civil monetary penalty is not the most appropriate response, OFAC may issue a Finding of Violation that identifies the violation. A Finding of Violation may also convey OFAC's concerns about the violation and/or the Subject Person's OFAC compliance policies, practices and/or procedures, and/or identify the need for further compliance steps to be taken. A Finding of Violation represents a final enforcement response to the violation, unless OFAC later learns of additional related violations or other relevant facts, and constitutes a final agency determination that a violation has occurred. A Finding of Violation will afford the Subject Person an opportunity to respond to OFAC's determination that a violation has occurred before that determination becomes final. In the event a Subject Person so responds, the initial Finding of Violation will not constitute a final agency determination that a violation has occurred. In such cases, after considering the response received, OFAC will inform the Subject Person of its final enforcement response to the apparent violation.

E. *Civil Monetary Penalty.* If OFAC determines that a violation has occurred and, based on an analysis of the General Factors outlined in Section III of these Guidelines, concludes that the Subject Person's conduct warrants the imposition of a monetary penalty, OFAC may impose a civil monetary penalty. Civil monetary penalty amounts will be determined as discussed in Section V of these Guidelines. The imposition of a civil monetary penalty constitutes a final agency determination that a violation has occurred and represents a final civil enforcement response to the violation. OFAC will afford the Subject Person an opportunity to respond to OFAC's determination that a violation has occurred before a final penalty is imposed.

F. *Criminal Referral.* In appropriate circumstances, OFAC may refer the matter to appropriate law enforcement agencies for criminal investigation and/or prosecution. Apparent sanctions violations that OFAC has referred for criminal investigation and/or prosecution also may be subject to OFAC civil penalty or other administrative action.

G. *Other Administrative Actions.* In addition to or in lieu of other administrative actions, OFAC may also take the following administrative actions in response to an apparent violation:

1. *License Denial, Suspension, Modification, or Revocation.* OFAC authorizations to engage in a transaction (including the release of blocked funds) pursuant to a general or specific license may be withheld, denied, suspended, modified, or revoked in response to an apparent violation.

2. *Cease and Desist Order.* OFAC may order the Subject Person to cease and desist from conduct that is prohibited by any of the sanctions programs enforced by OFAC when OFAC has reason to believe that a Subject Person has engaged in such conduct and/or that such conduct is ongoing or may recur.

III. General Factors Affecting Administrative Action

As a general matter, OFAC will consider some or all of the following General Factors in determining the appropriate administrative action in response to an apparent violation of U.S. sanctions by a Subject Person, and, where a civil monetary penalty is imposed, in determining the appropriate amount of any such penalty:

A. *Willful or Reckless Violation of Law:* a Subject Person's willfulness or recklessness in violating, attempting to violate, conspiring to violate, or causing a violation of the law. Generally, to the extent the conduct at issue is the result of willful conduct or a deliberate intent to violate, attempt to violate, conspire to violate, or cause a violation of the law, the OFAC enforcement response will be stronger. Among the factors OFAC may consider in evaluating willfulness or recklessness are:

1. *Willfulness.* Was the conduct at issue the result of a decision to take action with the knowledge that such action would constitute a violation of U.S. law? Did the Subject Person know that the underlying conduct constituted, or likely constituted, a violation of U.S. law at the time of the conduct?

2. *Recklessness.* Did the Subject Person demonstrate reckless disregard for U.S. sanctions requirements or otherwise fail to exercise a minimal degree of caution or care in avoiding conduct that led to the apparent violation? Were there warning signs that should have alerted the Subject Person that an action or failure to act would lead to an apparent violation?

3. *Concealment.* Was there an effort by the Subject Person to hide or purposely obfuscate its conduct in order to mislead OFAC, Federal, State, or foreign regulators, or other

parties involved in the conduct about an apparent violation?

4. *Pattern of Conduct.* Did the apparent violation constitute or result from a pattern or practice of conduct or was it relatively isolated and atypical in nature?

5. *Prior Notice.* Was the Subject Person on notice, or should it reasonably have been on notice, that the conduct at issue, or similar conduct, constituted a violation of U.S. law?

6. *Management Involvement.* In cases of entities, at what level within the organization did the willful or reckless conduct occur? Were supervisory or managerial level staff aware, or should they reasonably have been aware, of the willful or reckless conduct?

B. *Awareness of Conduct at Issue:* the Subject Person's awareness of the conduct giving rise to the apparent violation. Generally, the greater a Subject Person's actual knowledge of, or reason to know about, the conduct constituting an apparent violation, the stronger the OFAC enforcement response will be. In the case of a corporation, awareness will focus on supervisory or managerial level staff in the business unit at issue, as well as other senior officers and managers. Among the factors OFAC may consider in evaluating the Subject Person's awareness of the conduct at issue are:

1. *Actual Knowledge.* Did the Subject Person have actual knowledge that the conduct giving rise to an apparent violation took place? Was the conduct part of a business process, structure or arrangement that was designed or implemented with the intent to prevent or shield the Subject Person from having such actual knowledge, or was the conduct part of a business process, structure or arrangement implemented for other legitimate reasons that made it difficult or impossible for the Subject Person to have actual knowledge?

2. *Reason to Know.* If the Subject Person did not have actual knowledge that the conduct took place, did the Subject Person have reason to know, or should the Subject Person reasonably have known, based on all readily available information and with the exercise of reasonable due diligence, that the conduct would or might take place?

3. *Management Involvement.* In the case of an entity, was the conduct undertaken with the explicit or implicit knowledge of senior management, or was the conduct undertaken by personnel outside the knowledge of senior management? If the apparent violation was undertaken without the knowledge of senior management, was there oversight intended to detect and prevent violations, or did the lack of knowledge by senior management result from disregard for its responsibility to comply with applicable sanctions laws?

C. *Harm to Sanctions Program Objectives:* the actual or potential harm to sanctions program objectives caused by the conduct giving rise to the apparent violation. Among the factors OFAC may consider in evaluating the harm to sanctions program objectives are:

1. *Economic or Other Benefit to the Sanctioned Individual, Entity, or Country:* the economic or other benefit conferred or attempted to be conferred to sanctioned individuals, entities, or countries as a result of an apparent violation, including the number, size, and impact of the transactions constituting an apparent violation(s), the length of time over which they occurred, and the nature of the economic or other benefit conferred. OFAC may also consider the causal link between the Subject Person's conduct and the economic benefit conferred or attempted to be conferred.

2. *Implications for U.S. Policy:* the effect that the circumstances of the apparent violation had on the integrity of the U.S. sanctions program and the related policy objectives involved.

3. *License Eligibility:* whether the conduct constituting the apparent violation likely would have been licensed by OFAC under existing licensing policy.

4. *Humanitarian activity:* whether the conduct at issue was in support of a humanitarian activity.

D. *Individual Characteristics:* the particular circumstances and characteristics of a Subject Person. Among the factors OFAC may consider in evaluating individual characteristics are:

1. *Commercial Sophistication:* the commercial sophistication and experience of the Subject Person. Is the Subject Person an individual or an entity? If an individual, was the conduct constituting the apparent violation for personal or business reasons?

2. *Size of Operations and Financial Condition:* the size of a Subject Person's business operations and overall financial condition, where such information is available and relevant. Qualification of the Subject Person as a small business or organization for the purposes of the Small Business Regulatory Enforcement Fairness Act, as determined by reference to the applicable regulations of the Small Business Administration, may also be considered.

3. *Volume of Transactions:* the total volume of transactions undertaken by the Subject Person on an annual basis, with attention given to the apparent violations as compared with the total volume.

4. *Sanctions History:* the Subject Person's sanctions history, including OFAC's issuance of prior penalties, findings of violations or cautionary, warning or evaluative letters, or other administrative actions (including settlements). As a general matter, OFAC will only consider a Subject Person's sanctions history for the five years preceding the date of the transaction giving rise to the apparent violation.

E. *Compliance Program:* the existence, nature and adequacy of a Subject Person's risk-based OFAC compliance program at the time of the apparent violation, where relevant. In the case of an institution subject to regulation where OFAC has entered into a Memorandum of Understanding (MOU) with the Subject Person's regulator, OFAC will follow the procedures set forth in such MOU regarding consultation with the regulator with regard to the quality and effectiveness of the Subject Person's compliance program. Even in the absence of an MOU, OFAC may take into consideration the views of federal, state, or foreign regulators, where relevant. Further information about risk-based compliance programs for financial institutions is set forth in the annex hereto.

F. *Remedial Response:* the Subject Person's corrective action taken in response to the apparent violation. Among the factors OFAC may consider in evaluating the remedial response are:

1. The steps taken by the Subject Person upon learning of the apparent violation. Did the Subject Person immediately stop the conduct at issue?

2. In the case of an entity, the processes followed to resolve issues related to the apparent violation. Did the Subject Person discover necessary information to ascertain the causes and extent of the apparent violation, fully and expeditiously? Was senior management fully informed? If so, when?

3. In the case of an entity, whether the Subject Person adopted new and more effective internal controls and procedures to prevent a recurrence of the apparent violation. If the Subject Person did not have an OFAC compliance program in place at the time of the apparent violation, did it implement one upon discovery of the apparent violations? If it did have an OFAC compliance program, did it take appropriate steps to enhance the program to prevent the recurrence of similar violations? Did the entity provide the individual(s) responsible for the apparent violation with additional training, and/or take other appropriate action, to ensure that similar violations do not occur in the future?

4. Where applicable, whether the Subject Person undertook a thorough review to identify other possible violations.

G. *Cooperation with OFAC:* the nature and extent of the Subject Person's cooperation with OFAC. Among the factors OFAC may consider in evaluating cooperation with OFAC are:

1. Did the Subject Person voluntarily self-disclose the apparent violation to OFAC?

2. Did the Subject Person provide OFAC with all relevant information regarding an apparent violation (whether or not voluntarily self-disclosed)?

3. Did the Subject Person research and disclose to OFAC relevant information regarding any other apparent violations caused by the same course of conduct?

4. Was information provided voluntarily or in response to an administrative subpoena?

5. Did the Subject Person cooperate with, and promptly respond to, all requests for information?

6. Did the Subject Person enter into a statute of limitations tolling agreement, if requested by OFAC (particularly in situations where the apparent violations were not immediately notified to or discovered by OFAC, in particularly complex cases, and in cases in which the Subject Person has requested and received additional time to respond to a request for information from OFAC)? If so, the Subject Person's entering into a tolling agreement will be deemed a mitigating factor. **Note:** a Subject Person's refusal to enter into a tolling agreement will not be considered by OFAC as an aggravating factor in assessing a Subject Person's cooperation or otherwise under the Guidelines.

Where appropriate, OFAC will publicly note substantial cooperation provided by a Subject Person.

H. *Timing of apparent violation in relation to imposition of sanctions:* the timing of the

apparent violation in relation to the adoption of the applicable prohibitions, particularly if the apparent violation took place immediately after relevant changes in the sanctions program regulations or the addition of a new name to OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List).

I. *Other enforcement action:* other enforcement actions taken by federal, state, or local agencies against the Subject Person for the apparent violation or similar apparent violations, including whether the settlement of alleged violations of OFAC regulations is part of a comprehensive settlement with other federal, state, or local agencies.

J. *Future Compliance/Deterrence Effect:* the impact administrative action may have on promoting future compliance with U.S. economic sanctions by the Subject Person and similar Subject Persons, particularly those in the same industry sector.

K. *Other relevant factors on a case-by-case basis:* such other factors that OFAC deems relevant on a case-by-case basis in determining the appropriate enforcement response and/or the amount of any civil monetary penalty. OFAC will consider the totality of the circumstances to ensure that its enforcement response is proportionate to the nature of the violation.

IV. Civil Penalties for Failure To Comply With a Requirement To Furnish Information or Keep Records

As a general matter, the following civil penalty amounts shall apply to a Subject Person's failure to comply with a requirement to furnish information or maintain records:

A. The failure to comply with a requirement to furnish information pursuant to 31 CFR 501.602 may result in a penalty in an amount up to $20,000, irrespective of whether any other violation is alleged. Where OFAC has reason to believe that the apparent violation(s) that is the subject of the requirement to furnish information involves a transaction(s) valued at greater than $500,000, a failure to comply with a requirement to furnish information may result in a penalty in an amount up to $50,000, irrespective of whether any other violation is alleged. A failure to comply with a requirement to furnish information may be considered a continuing violation, and the penalties described above may be imposed each month that a party has continued to fail to comply with the requirement to furnish information. OFAC may also seek to have a requirement to furnish information judicially enforced. Imposition of a civil monetary penalty for failure to comply with a requirement to furnish information does not preclude OFAC from seeking such judicial enforcement of the requirement to furnish information.

B. The late filing of a required report, whether set forth in regulations or in a specific license, may result in a civil monetary penalty in an amount up to $2,500, if filed within the first 30 days after the report is due, and a penalty in an amount up to $5,000 if filed more than 30 days after the report is due. If the report relates to blocked assets, the penalty may include an additional $1,000 for every 30 days that the report is overdue, up to five years.

C. The failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license may result in a penalty in an amount up to $50,000.

V. Civil Penalties

OFAC will review the facts and circumstances surrounding an apparent violation and apply the General Factors for Taking Administrative Action in Section III above in determining whether to initiate a civil penalty proceeding and in determining the amount of any civil monetary penalty. OFAC will give careful consideration to the appropriateness of issuing a cautionary letter or Finding of Violation in lieu of the imposition of a civil monetary penalty.

A. Civil Penalty Process

1. *Pre-Penalty Notice.* If OFAC has reason to believe that a sanctions violation has occurred and believes that a civil monetary penalty is appropriate, it will issue a Pre-Penalty Notice in accordance with the procedures set forth in the particular regulations governing the conduct giving rise to the apparent violation. The amount of the proposed penalty set forth in the Pre-Penalty Notice will reflect OFAC's preliminary assessment of the appropriate penalty amount, based on information then in OFAC's possession. The amount of the final penalty may change as OFAC learns additional relevant information. If, after issuance of a Pre-Penalty Notice, OFAC determines that a penalty in an amount that represents an increase of more than 10 percent from the proposed penalty set forth in the Pre-Penalty Notice is appropriate, or if OFAC intends to allege additional violations, it will issue a revised Pre-Penalty Notice setting forth the new proposed penalty amount and/or alleged violations.

a. In general, the Pre-Penalty Notice will set forth the following with respect to the specific violations alleged and the proposed penalties:

i. Description of the alleged violations, including the number of violations and their value, for which a penalty is being proposed;

ii. Identification of the regulatory or other provisions alleged to have been violated;

iii. Identification of the base category (defined below) according to which the proposed penalty amount was calculated and the General Factors that were most relevant to the determination of the proposed penalty amount;

iv. The maximum amount of the penalty to which the Subject Person could be subject under applicable law; and

v. The proposed penalty amount, determined in accordance with the provisions set forth in these Guidelines.

b. The Pre-Penalty Notice will also include information regarding how to respond to the Pre-Penalty Notice including:

i. A statement that the Subject Person may submit a written response to the Pre-Penalty Notice by a date certain addressing the alleged violation(s), the General Factors Affecting Administrative Action set forth in Section III of these Guidelines, and any other information or evidence that the Subject Person deems relevant to OFAC's consideration.

ii. A statement that a failure to respond to the Pre-Penalty Notice may result in the imposition of a civil monetary penalty.

2. *Response to Pre-Penalty Notice.* A Subject Person may submit a written response to the Pre-Penalty Notice in accordance with the procedures set forth in the particular regulations governing the conduct giving rise to the apparent violation. Generally, the response should either agree to the proposed penalty set forth in the Pre-Penalty Notice or set forth reasons why a penalty should not be imposed or, if imposed, why it should be a lesser amount than proposed, with particular attention paid to the General Factors Affecting Administrative Action set forth in Section III of these Guidelines. The response should include all documentary or other evidence available to the Subject Person that supports the arguments set forth in the response. OFAC will consider all relevant materials submitted.

3. *Penalty Notice.* If OFAC receives no response to a Pre-Penalty Notice within the time prescribed in the Pre-Penalty Notice, or if following the receipt of a response to a Pre-Penalty Notice and a review of the information and evidence contained therein OFAC concludes that a civil monetary penalty is warranted, a Penalty Notice generally will be issued in accordance with the procedures set forth in the particular regulations governing the conduct giving rise to the violation. A Penalty Notice constitutes a final agency determination that a violation has occurred. The penalty amount set forth in the Penalty Notice will take into account relevant additional information provided in response to a Pre-Penalty Notice. In the absence of a response to a Pre-Penalty Notice, the penalty amount set forth in the Penalty Notice will generally be the same as the proposed penalty set forth in the Pre-Penalty Notice.

4. *Referral to Financial Management Division.* The imposition of a civil monetary penalty pursuant to a Penalty Notice creates a debt due the U.S. Government. OFAC will advise Treasury's Financial Management Division upon the imposition of a penalty. The Financial Management Division may take follow-up action to collect the penalty assessed if it is not paid within the prescribed time period set forth in the Penalty Notice. In addition or instead, the matter may be referred to the U.S. Department of Justice for appropriate action to recover the penalty.

5. *Final Agency Action.* The issuance of a Penalty Notice constitutes final agency action with respect to the violation(s) for which the penalty is assessed.

B. Amount of Civil Penalty

1. *Egregious case.* In those cases in which a civil monetary penalty is deemed appropriate, OFAC will make a determination as to whether a case is deemed ''egregious'' for purposes of the base penalty calculation. This determination will be based on an analysis of the applicable General Factors. In making the egregiousness

determination, OFAC generally will give substantial weight to General Factors A (''willful or reckless violation of law''), B (''awareness of conduct at issue''), C (''harm to sanctions program objectives'') and D (''individual characteristics''), with particular emphasis on General Factors A and B. A case will be considered an ''egregious case'' where the analysis of the applicable General Factors, with a focus on those General Factors identified above, indicates that the case represents a particularly serious violation of the law calling for a strong enforcement response. A determination that a case is ''egregious'' will be made by the Director or Deputy Director.

2. *Pre-Penalty Notice.* The penalty amount proposed in a Pre-Penalty Notice shall generally be calculated as follows, except that neither the base amount nor the proposed penalty will exceed the applicable statutory maximum amount:[6]

a. Base Category Calculation

i. In a non-egregious case, if the apparent violation is disclosed through a voluntary self-disclosure by the Subject Person, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be one-half of the transaction value, capped at a maximum base amount of $125,000 per violation (except in the case of transactions subject to the Trading With the Enemy Act, in which case the base amount of the proposed civil penalty will be capped at the lesser of $125,000 or one-half of the maximum statutory penalty under TWEA, which at the time of publication of these Guidelines equaled $32,500 per violation).

ii. In a non-egregious case, if the apparent violation comes to OFAC's attention by means other than a voluntary self-disclosure, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be the ''applicable schedule amount,'' as defined above (capped at a maximum base amount of $250,000 per violation, or, in the case of transactions subject to the Trading With the Enemy Act, capped at the lesser of $250,000 or the maximum statutory penalty under TWEA, which at the time of publication of these Guidelines equaled a maximum of $65,000 per violation).

iii. In an egregious case, if the apparent violation is disclosed through a voluntary self-disclosure by a Subject Person, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be one-half of the applicable statutory maximum penalty applicable to the violation.

iv. In an egregious case, if the apparent violation comes to OFAC's attention by means other than a voluntary self-disclosure, the base amount of the proposed civil penalty in the Pre-Penalty Notice shall be the applicable statutory maximum penalty amount applicable to the violation.

The following matrix represents the base amount of the proposed civil penalty for each category of violation:

[6] For apparent violations identified in the Cuba Penalty Schedule, 68 Fed. Reg. 4429 (Jan. 29, 2003), for which a civil monetary penalty has been deemed appropriate, the base penalty amount shall equal the amount set forth in the Schedule for such violation, except that the base penalty amount shall be reduced by 50% in cases of voluntary self-disclosure.

BASE PENALTY MATRIX

Voluntary Self-Disclosure	Egregious Case: NO	Egregious Case: YES
YES	(1) One-Half of Transaction Value (capped at $125,000 per violation/ $32,500 per TWEA violation)	(3) One-Half of Applicable Statutory Maximum
NO	(2) Applicable Schedule Amount (capped at $250,000 per violation/ $65,000 per TWEA violation)	(4) Applicable Statutory Maximum

Where the base penalty amount would otherwise exceed the statutory maximum civil penalty amount applicable to an apparent violation, the base penalty amount shall equal such applicable statutory maximum amount.

b. Adjustment for Applicable Relevant General Factors

The base amount of the proposed civil penalty may be adjusted to reflect applicable General Factors for Administrative Action set forth in Section III of these Guidelines. Each factor may be considered mitigating or aggravating, resulting in a lower or higher proposed penalty amount. As a general matter, in those cases where the following General Factors are present, OFAC will adjust the base proposed penalty amount in the following manner:

i. In cases involving substantial cooperation with OFAC but no voluntary self-disclosure as defined herein, including cases in which an apparent violation is reported to OFAC by a third party but the Subject Person provides substantial additional information regarding the apparent violation and/or other related violations, the base penalty amount generally will be reduced between 25 and 40 percent. Substantial cooperation in cases involving voluntary self-disclosure may also be considered as a further mitigating factor.

ii. In cases involving a Subject Person's first violation, the base penalty amount generally will be reduced up to 25 percent. An apparent violation generally will be considered a ''first violation'' if the Subject Person has not received a penalty notice or Finding of Violation from OFAC in the five years preceding the date of the transaction giving rise to the apparent violation. A group of substantially similar apparent violations addressed in a single Pre-Penalty Notice shall be considered as a single violation for purposes of this subsection. In those cases where a prior penalty notice or Finding of Violation within the preceding five years involved conduct of a substantially different nature from the apparent violation at issue, OFAC may consider the apparent violation at issue a ''first violation.'' In determining the extent of any mitigation for a first violation, OFAC may consider any prior OFAC enforcement action taken with respect to the Subject Person, including any cautionary, warning or evaluative letters issued, or any civil monetary settlements entered into with OFAC.

In all cases, the proposed penalty amount will not exceed the applicable statutory maximum.

In cases involving a large number of apparent violations, where the transaction value of all apparent violations is either unknown or would require a disproportionate allocation of resources to determine, OFAC may estimate or extrapolate the transaction value of the total universe of apparent violations in determining the amount of any proposed civil monetary penalty.

3. *Penalty Notice.* The amount of the proposed civil penalty in the Pre-Penalty Notice will be the presumptive starting point for calculation of the civil penalty amount in the Penalty Notice. OFAC may adjust the penalty amount in the Penalty Notice based on:

a. Evidence presented by the Subject Person in response to the Pre-Penalty Notice,

or otherwise received by OFAC with respect to the underlying violation(s); and/or

b. Any modification resulting from further review and reconsideration by OFAC of the proposed civil monetary penalty in light of the General Factors for Administrative Action set forth in Section III above.

In no event will the amount of the civil monetary penalty in the Penalty Notice exceed the proposed penalty set forth in the Pre-Penalty Notice by more than 10 percent, or include additional alleged violations, unless a revised Pre-Penalty Notice has first been sent to the Subject Person as set forth above. In the event that OFAC determines upon further review that no penalty is appropriate, it will so inform the Subject Person in a no-action letter, a cautionary letter, or a Finding of Violation.

C. Settlements

A settlement does not constitute a final agency determination that a violation has occurred.

1. *Settlement Process.* Settlement discussions may be initiated by OFAC, the Subject Person or the Subject Person's authorized representative. Settlements generally will be negotiated in accordance with the principles set forth in these Guidelines with respect to appropriate penalty amounts. OFAC may condition the entry into or continuation of settlement negotiations on the execution of a tolling agreement with respect to the statute of limitations.

2. *Settlement Prior to Issuance of Pre-Penalty Notice.* Where settlement discussions occur prior to the issuance of a Pre-Penalty Notice, the Subject Person may request in writing that OFAC withhold issuance of a Pre-Penalty Notice pending the conclusion of settlement discussions. OFAC will generally agree to such a request as long as settlement discussions are continuing in good faith and the statute of limitations is not at risk of expiring.

3. *Settlement Following Issuance of Pre-Penalty Notice.* If a matter is settled after a Pre-Penalty Notice has been issued, but before a final Penalty Notice is issued, OFAC will not make a final determination as to whether a sanctions violation has occurred. In the event no settlement is reached, the period specified for written response to the Pre-Penalty Notice remains in effect unless additional time is granted by OFAC.

4. *Settlements of Multiple Apparent Violations.* A settlement initiated for one apparent violation may also involve a comprehensive or global settlement of multiple apparent violations covered by other Pre-Penalty Notices, apparent violations for which a Pre-Penalty Notice has not yet been issued by OFAC, or previously unknown apparent violations reported to OFAC during the pendency of an investigation of an apparent violation.

Annex

The following matrix can be used by financial institutions to evaluate their compliance programs:

OFAC RISK MATRIX

Low	Moderate	High
Stable, well-known customer base in a localized environment.	Customer base changing due to branching, merger, or acquisition in the domestic market.	A large, fluctuating client base in an international environment.
Few high-risk customers; these may include nonresident aliens, foreign customers (including accounts with U.S. powers of attorney), and foreign commercial customers.	A moderate number of high-risk customers	A large number of high-risk customers.
No overseas branches and no correspondent accounts with foreign banks.	Overseas branches or correspondent accounts with foreign banks.	Overseas branches or multiple correspondent accounts with foreign banks.
No electronic services (*e.g.,* e-banking) offered, or products available are purely informational or non-transactional.	The institution offers limited electronic (*e.g.,* e-banking) products and services.	The institution offers a wide array of electronic (*e.g.,* e-banking) products and services (*i.e.,* account transfers, e-bill payment, or accounts opened via the Internet).
Limited number of funds transfers for customers and non-customers, limited third-party transactions, and no international funds transfers.	A moderate number of funds transfers, mostly for customers. Possibly, a few international funds transfers from personal or business accounts.	A high number of customer and non-customer funds transfers, including international funds transfers.
No other types of international transactions, such as trade finance, cross-border ACH, and management of sovereign debt.	Limited other types of international transactions.	A high number of other types of international transactions.
No history of OFAC actions. No evidence of apparent violation or circumstances that might lead to a violation.	A small number of recent actions (*i.e.,* actions within the last five years) by OFAC, including notice letters, or civil money penalties, with evidence that the institution addressed the issues and is not at risk of similar violations in the future.	Multiple recent actions by OFAC, where the institution has not addressed the issues, thus leading to an increased risk of the institution undertaking similar violations in the future.
Management has fully assessed the institution's level of risk based on its customer base and product lines. This understanding of risk and strong commitment to OFAC compliance is satisfactorily communicated throughout the organization.	Management exhibits a reasonable understanding of the key aspects of OFAC compliance and its commitment is generally clear and satisfactorily communicated throughout the organization, but it may lack a program appropriately tailored to risk.	Management does not understand, or has chosen to ignore, key aspects of OFAC compliance risk. The importance of compliance is not emphasized or communicated throughout the organization.
The board of directors, or board committee, has approved an OFAC compliance program that includes policies, procedures, controls, and information systems that are adequate, and consistent with the institution's OFAC risk profile.	The board has approved an OFAC compliance program that includes most of the appropriate policies, procedures, controls, and information systems necessary to ensure compliance, but some weaknesses are noted.	The board has not approved an OFAC compliance program, or policies, procedures, controls, and information systems are significantly deficient.
Staffing levels appear adequate to properly execute the OFAC compliance program.	Staffing levels appear generally adequate, but some deficiencies are noted.	Management has failed to provide appropriate staffing levels to handle workload.
Authority and accountability for OFAC compliance are clearly defined and enforced, including the designation of a qualified OFAC officer.	Authority and accountability are defined, but some refinements are needed. A qualified OFAC officer has been designated.	Authority and accountability for compliance have not been clearly established. No OFAC compliance officer, or an unqualified one, has been appointed. The role of the OFAC officer is unclear.

OFAC RISK MATRIX—Continued

Low	Moderate	High
Training is appropriate and effective based on the institution's risk profile, covers applicable personnel, and provides necessary up-to-date information and resources to ensure compliance.	Training is conducted and management provides adequate resources given the risk profile of the organization; however, some areas are not covered within the training program.	Training is sporadic and does not cover important regulatory and risk areas or is non-existent.
The institution employs strong quality control methods.	The institution employs limited quality control methods.	The institution does not employ quality control methods.

Dated: November 2, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–26754 Filed 11–6–09; 8:45 am]

BILLING CODE 4811–45–P

ARMED FORCES RETIREMENT HOME

38 CFR Part 200

[Docket No. AFRH 2009–01]

RIN 3030–ZA00

Compliance with the National Environmental Policy Act

AGENCY: Armed Forces Retirement Home.

ACTION: Final rule.

SUMMARY: The Armed Forces Retirement Home (AFRH) has developed regulations establishing policy and assigning responsibilities for implementing the National Environmental Policy Act (NEPA) of 1969, related laws, executive orders, and regulations in the decision-making process of the AFRH. These regulations have been developed to comply with Section 103 of 42 U.S.C. 4321.

DATES: Effective November 9, 2009.

FOR FURTHER INFORMATION CONTACT: Joe Woo, Master Planner, (202) 730–3445.

SUPPLEMENTARY INFORMATION: This rule is not a major rule for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, AFRH certifies that these rules will not have a significant impact on small business entities.

These rules set out environmental policy for the Armed Forces Retirement Home (AFRH) and provide direction for carrying out the procedural requirements of the National Environmental Policy Act. These regulations were developed to comply with Section 103 of 42 U.S.C. 4321. These rules were published for public comment in the **Federal Register** (August 27, 2009, 74 FR 43649) and no comments were received.

List of Subjects in 38 CFR Part 200

Armed forces, Environmental protection, Retirement.

■ For the reasons stated in the preamble, the Armed Forces Retirement Home (AFRH) establishes 38 CFR Chapter II consisting of Part 200 to read as follows:

CHAPTER II—ARMED FORCES RETIREMENT HOME

PART 200—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

200.1 Purpose.
200.2 Background.
200.3 Responsibilities.
200.4 Implementation of NEPA and related authorities.
200.5 Coordination with other authorities.
200.6 Public involvement.
200.7 Cooperating agencies.
200.8 AFRH participation in NEPA compliance by other agencies.
Appendix A to Part 200—Categorical Exclusions
Appendix B to Part 200—The Action Requiring an Environmental Assessment
Appendix C to Part 200—Actions Requiring Environmental Impact Statement

Authority: 24 U.S.C. 401, *et seq.*

§ 200.1 Purpose.

These regulations set out AFRH environmental policy and provide direction for carrying out the procedural requirements of the National Environmental Policy Act (NEPA) and related legal authorities.

§ 200.2 Background.

(a) The NEPA and the Council on Environmental Quality regulations implementing the procedural requirements of NEPA (40 CFR 1500 through 1508, hereinafter, the CEQ regulations) require that each Federal agency consider the impact of its actions on the human environment and prescribe procedures to be followed. Other laws, executive orders, and regulations provide related direction. NEPA establishes and AFRH adopts as policy that as a Federal agency, AFRH will: Use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may:

(1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(b) As an important means of carrying out this policy, AFRH will analyze and consider the impacts of its proposed actions (activities, programs, projects, legislation) and any reasonable alternatives on the environment, and on the relationship of people with the environment. This analysis is to be undertaken early in planning any such action, as an aid to deciding whether the action will go forward, and if so how. Consideration must be given to reasonable alternative means of achieving the purpose and need for the proposed action, and to the alternative of not taking the proposed action. The analysis is to be completed, and used to inform the decision maker and make the public aware of the action's potential impacts, before the decision is made about whether and how to proceed with the action. Relevant environmental documents, comments, and responses regarding the proposal will accompany the proposal and be presented to the AFRH decision maker for their consideration.

(c) NEPA also requires and AFRH will ensure that, to the fullest extent possible, analyses and consultations required by other environmental laws be coordinated with those required under NEPA, to reduce redundancy, paperwork, time, and cost.

(d) The AFRH is an independent Federal agency that provides residence and related services for certain retired and former members of the Armed Forces. The AFRH has property in Washington, DC and Gulfport, MS.

(e) This part contains AFRH's general policy regarding NEPA implementation and sets out AFRH procedures that supplement the CEQ regulations for meeting NEPA requirements. It also assigns responsibilities to the Chief Operating Officer (COO) for the AFRH and the Master Planner. These regulations provide further detail regarding the conduct of NEPA impact analyses.

§ 200.3 Responsibilities.

(a) The COO is the AFRH NEPA official responsible for compliance with NEPA for AFRH actions. The COO also provides the AFRH's views on other agencies' environmental impact statements (EIS).

(b) The Master Planner is the point of contact for information on: AFRH NEPA documents; NEPA oversight activities; and review of other agencies' EISs and NEPA documents.

(c) The AFRH's assigned counsel is the point of contact for legal questions involving environmental matters.

§ 200.4 Implementation of NEPA and related authorities.

(a) *Classification of AFRH actions.* (1) All AFRH proposed actions typically fall into one of the following three classes, in terms of requirements for review under NEPA: Categorical exclusions, environmental assessments, and environmental impact statements.

(2) The Master Planner, is responsible for classifying proposed actions and undertaking the level of analysis, consultation, and review appropriate to each.

(b) *Categorical Exclusions (CATEX).* (1) A categorical exclusion (CATEX) is a category of actions which do not individually or cumulatively have a significant effect on the human environment, except under extraordinary circumstances (42 CFR 1508.4). Because they lack the potential for effect, they do not require detailed analysis or documentation under NEPA.

(i) Determining when to use a CATEX (screening criteria). To use a CATEX, the proponent must satisfy the following three screening conditions:

(A) The action has not been segmented. Determine that the action has not been segmented to meet the definition of a CATEX. Segmentation can occur when an action is broken down into small parts in order to avoid the appearance of significance of the total action. An action can be too narrowly defined, minimizing potential impacts in an effort to avoid a higher level of NEPA documentation. The scope of an action must include the consideration of connected, cumulative, and similar actions.

(B) No exceptional circumstances exist. Determine if the action involves extraordinary circumstances that would preclude the use of a CATEX (*see* paragraphs (b)(1)(ii)(A) through (xiv) of this section).

(C) One (or more) CATEX (*See* Appendix A to Part 200) encompasses the proposed action. Identify a CATEX (or multiple CATEXs) that potentially encompasses the proposed action. If no CATEX is appropriate, and the project is not exempted by statute or emergency provisions, an EA or an EIS must be prepared, before a proposed action may proceed.

(ii) Extraordinary circumstances that preclude the use of a CATEX are:

(A) Reasonable likelihood of significant effects on public health, safety, or the environment.

(B) Reasonable likelihood of significant environmental effects (direct, indirect, and cumulative).

(C) Imposition of uncertain or unique environmental risks.

(D) Greater scope or size than is normal for this category of action.

(E) Reportable releases of hazardous or toxic substances as specified in 40 CFR part 302.

(F) Releases of petroleum, oils, and lubricants, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.

(G) When a review of an action reveals that air emissions exceed de minimis levels or otherwise that a formal Clean Air Act conformity determination is required.

(H) Reasonable likelihood of violating any Federal, State, or local law or requirements imposed for the protection of the environment.

(I) Unresolved effect on environmentally sensitive resources, as defined in paragraph (b)(1)(iii) of this section.

(J) Involving effects on the quality of the environment that are likely to be highly controversial.

(K) Involving effects on the environment that are highly uncertain, involve unique or unknown risks, or are scientifically controversial.

(L) Establishes a precedent (or makes decisions in principle) for future or subsequent actions that are reasonably likely to have a future significant effect.

(M) Potential for degradation of already existing poor environmental conditions. Also, initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(N) Introduction/employment of unproven technology.

(iii) If a proposed action would adversely affect ''environmentally sensitive'' resources, unless the impact has been resolved through another environmental process (*e.g.,* CZMA, NHPA, CWA, *etc.*) a CATEX cannot be used. Environmentally sensitive resources include:

(A) Listed or proposed Federally listed, threatened, or endangered species or their designated or proposed critical habitats.

(B) Properties listed or eligible for listing on the National Register of Historic Places.

(C) Areas having special designation or recognition such as prime or unique agricultural lands; coastal zones; designated wilderness or wilderness study areas; wild and scenic rivers; National Historic Landmarks (designated by the Secretary of the Interior); 100-year floodplains; wetlands; sole source aquifers (potential sources of drinking water); National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity.

(iv) The use of a CATEX does not relieve the proponent from compliance with other statutes, such as RCRA, or consultations under the Endangered Species Act or the NHPA. Such consultations may be required to determine the applicability of the CATEX screening criteria.

(v) For those CATEXs that require documentation, a brief (one to two sentences) presentation of conclusions reached during screening should be included with the checklist. Checklists may be obtained from the Master Planner at 3700 North Capitol Street, NW., Washington, DC 20011.

(2) AFRH recognizes two types of CATEX:

(i) CATEX—does not require documentation unless the Master Planner determines that an extraordinary circumstance may exist, whereupon a CATEX—requires documentation must be prepared (*see* below). The likelihood of such a circumstance is judged to be so low that

no specific environmental document is typically required.

(ii) CATEX—requires documentation that involves a cursory review to ensure that no extraordinary circumstances exist. For an action falling into such a category, a CATEX requiring documentation is completed to support a determination by the Master Planner, as to whether the action needs further review under NEPA. A CATEX documentation is developed and maintained by the Master Planner.

(3) CATEXs requiring and not requiring documentation are listed in Appendix A of these regulations.

(c) *Environmental Assessment (EA).* (1) An Environmental Assessment (EA) is a concise public document prepared by or on behalf of AFRH that assists AFRH in deciding whether or not there may be significant effects requiring a more detailed Environmental Impact Statement. Actions typically requiring preparation of an EA are found in Appendix B to Part 200.

(2) The analysis required for an EA leads either to a Finding of No Significant Impact (FONSI) or a Notice of Intent (NOI) to prepare an Environmental Impact Statement. AFRH will prepare a FONSI in accordance with 40 CFR 1508.13, if the agency determines on the basis of the EA that there are no significant environmental effects and therefore, there is no need to prepare an Environmental Impact Statement. AFRH shall make the FONSI available to the affected public as specified in § 1506.6. Under certain limited circumstances, AFRH shall make the finding of no significant impact available for public review for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement;

(ii) The nature of the proposed action is one without precedent; or

(iii) There is controversy associated with the environmental effects of the proposed action.

(d) *Environmental Impact Statement (EIS).* (1) An Environmental Impact Statement (EIS) is a detailed analysis and report, that presents the environmental effects of a proposed action and its reasonable alternatives. An EIS is prepared for any AFRH action that may have significant effects on the quality of the human environment. A Notice of Intent will be prepared and published in the **Federal Register** as soon as practicable after deciding to prepare an EIS. When a lengthy period of time will elapse between the decision to prepare the EIS and preparation of the EIS, the notice of intent should be published at a reasonable time prior to preparing the EIS.

(2) Certain AFRH actions are likely to have significant effects on the quality of the human environment, and hence typically require an EIS. These classes of action are listed in Appendix C to Part 200.

(3) When it appears that the action is likely to have significant effects on the quality of the human environment, AFRH will prepare an EIS. An action that typically requires an EIS is found in Appendix C to Part 200. An EA may be prepared to aid in deciding whether an EIS is needed, or the responsible official may decide to prepare an EIS without preparing an EA.

(4) Direction for preparing, circulating, finalizing, and using an EIS in decision making is found in the CEQ Regulations (40 CFR Parts 1500–1508).

(e) *Supplemental statements.* If an EA or an EIS has been completed and the AFRH goes to implement the action, but no action has been taken within four years of the completion of the EA or EIS, the AFRH will review the document to determine if circumstances have changed that would warrant a supplement to the original document. A supplemental statement will be provided to the decision maker to inform the decisions on whether and how to proceed with the proposed action and be maintained with the previous EA or EIS and related records for the proposed action.

(f) *Using NEPA in decision making.* (1) Compliance with NEPA and related authorities will begin at the earliest point in planning any action, when the widest reasonable range of alternatives is open for consideration.

(2) The NEPA review process will be carried out in coordination with continued planning.

(3) All personnel involved in planning actions should view NEPA review as part of effective planning, not as a mere documentation requirement.

(4) Outside agencies, State and local governments, Indian Tribes, and the public will whenever practicable be afforded reasonable opportunities to participate in the NEPA process.

(5) The results of NEPA review will be fully considered by each AFRH decision-maker before making a decision on an action subject to such review and the alternatives considered by the decision-maker will be encompassed within the range of alternatives for the action.

(6) AFRH will ensure relevant environmental documents, comments, and responses are part of the record in formal rulemaking or adjudicatory proceedings.

(7) Executives and other employees responsible for aspects of NEPA review will be held accountable for the performance of such responsibilities, through performance reviews and other administrative mechanisms.

§ 200.5 Coordination with other authorities.

(a) To the maximum extent feasible, NEPA review shall be coordinated with review of proposed actions under other environmental legal authorities, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); the National Historic Preservation Act (NHPA); the Endangered Species Act (ESA); Executive Orders 11988, 11990, and 13006; and other applicable authorities.

(b) In effecting such coordination, responsible AFRH officials will ensure that the substantive and procedural requirements of other environmental authorities are met, together with the requirements of NEPA. It will be explicitly understood that compliance with NEPA does not substitute for compliance with other environmental authorities, nor does compliance with such other authority substitute for compliance with NEPA.

§ 200.6 Public involvement.

(a) As part of its system for NEPA compliance, the COO and the Master Planner shall provide for levels and kinds of public involvement appropriate to the proposed action and its likely effects.

(b) Where a related authority provides specific procedures for public involvement, the responsible AFRH official shall ensure that such procedures where practicable in the process of NEPA review.

(c) Public involvement in the AFRH NEPA process shall have as its purpose the full disclosure of AFRH actions and alternatives to the public, within the constraints of AFRH program authorities, and giving the public a full opportunity to comment on the environmental effects of AFRH proposals.

(d) Pursuant to Executive Order 12898, special efforts will be made to involve members of potentially affected low-income and minority communities in NEPA review and decision-making. Such efforts may include, but are not limited to, special programs of community outreach, including cross-

cultural programs, translations of pertinent documents, and ensuring that translators are available at public meetings.

(e) Information pertaining to AFRH actions and/or NEPA documentation can be obtained through the Master Planner at 3700 North Capital Street, NW, Washington, DC 20011.

§ 200.7 Cooperating agencies.

(a) Federal agencies with jurisdiction by law will be invited to serve as cooperating agencies and Federal agencies with special expertise may be invited to serve as cooperating agencies in the conduct of NEPA review of an AFRH proposed action.

(b) The responsible AFRH official will invite other Tribal, State, and local agencies to serve as cooperating agencies with subject matter jurisdiction or special expertise in the conduct of NEPA review of an AFRH proposed action.

§ 200.8 AFRH participation in NEPA compliance by other agencies.

(a) AFRH may participate in the NEPA process as a cooperating agency for another lead agency's project, or as a commenter/reviewer of another agency's NEPA document. AFRH may also participate in environmental studies carried out by non-Federal parties (for example, a local government conducting studies under a State environmental policy law) where such studies are relevant to AFRH's interests or may be incorporated by AFRH into its own studies under NEPA. Where AFRH will be responsible for a decision on a project that is the subject of such a study, and has the authority to do so, AFRH will ensure that the study and its resulting documents meet the standards set forth in these regulations in coordination with the COO.

(b) As a cooperating agency, AFRH participates in the NEPA process as requested by the lead agency, in accordance with 40 CFR 1501.6 of the CEQ regulations. Tasks may include participating in meetings and providing specific information relevant to the matters over which it has jurisdiction by law or expertise.

(c) AFRH comments shall be prepared in consultation with, or by, the Master Planner.

(d) The responsible AFRH official may provide comments and/or reviews of another agency's NEPA documents, and/or other Federal and State environmental documents.

(e) AFRH comments shall be provided in accordance with 40 CFR 1503.3.

Appendix A to Part 200—Categorical Exclusions

A.1 Purpose

The purpose of Categorical Exclusions (CATEXs) is to limit extensive NEPA analysis to those actions that may be major Federal actions significantly affecting the quality of the human environment, thus saving time, effort, and taxpayer dollars.

A.2 Definition

An action is categorically excluded from the requirement to prepare an EA or an EIS if it meets the following definition:

''Categorical exclusion'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. (40 CFR 1508.4)

AFRH has identified two types of CATEXs: (1) The CATEX, which does not require documentation and requires completion of an environmental checklist.

A.3 CATEXs—Requires No Documentation

The following CATEXs require no documentation.

A.3(a) Granting a lease (*i.e.,* outlease), an easement, license, permit (*i.e.,* licenses to Federal entities), or other arrangements for Federal or non-Federal use of AFRH controlled real property, where such use will remain substantially the same in scope and intensity.

A.3(b) Extensions or renewals of leases, licenses or permits (*i.e.,* licenses to Federal entities) or succeeding leases, easements, licenses or permits whether AFRH is acting as grantor or grantee and there is no change in use of the facility.

A.3(c) Repair and alteration projects involving, but not adversely affecting, properties listed on or eligible for the National Register of Historic Places.

A.3(d) Repair to or replacement in kind of equipment or components in AFRH-controlled facilities without change in location, *e.g.* HVAC, electrical distribution systems, windows, doors or roof.

A.3(e) Disposal or other disposition of claimed or unclaimed personal property of deceased persons.

A.3(f) Supportive services that include health care and housing services, permanent housing placement, day care, nutritional services, collection of payment for services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services.

A.3(g) Normal personnel, fiscal, and administrative activities involving civilian personnel (recruiting, processing, paying, and records keeping).

A.3(h) Routine or minor facility maintenance, custodial, and groundskeeping activities such as window washing, lawn mowing, trash collecting, and snow removal that do not involve environmentally sensitive areas (such as eroded areas, wetlands, cultural sites, or areas with endangered/threatened species).

A.3(i) Environmental Site Assessment activities under RCRA and CERCLA;

A.3(j) Geological, geophysical, geochemical, and engineering surveys and mapping, including the establishment of survey marks;

A.3(k) Installation and operation of ambient air and noise monitoring equipment that does not include constructing or erecting towers;

A.3(l) Routine procurement of goods and services (complying with applicable procedures for sustainable or ''green'' procurement) to support operations and infrastructure, including routine utility services and contracts.

A.3(m) Routine movement/relocations of residents on site.

A.4 CATEXs Requiring Documentation

The following are categorical exclusions that require preparation of a checklist to ensure that no extraordinary circumstances exist that would require preparation of an EA or EIS. Checklists may be obtained from the Master Planner at 3700 North Capitol Street, NW., Washington, DC 20011.

A.4(a) Expansion or improvement of an existing facility where all of the following conditions are met:

A.4(a)(1) The structure and proposed use are substantially in compliance with local planning and zoning and any applicable State or Federal requirements;

A.4(a)(2) The proposed use will only slightly increase the number of motor vehicles at the facility;

A.4(a)(3) The site and the scale of construction are consistent with those of existing adjacent or nearby buildings; and

A.4(a)(4) There is no evidence of environmental controversy.

A.4(b) Transfer or disposal of real property to State or local agencies for preservation or protection of wildlife conservation and historic monument purposes.

A.4(c) Disposal of fixtures, related personal property, demountable structures, and transmission lines in accordance with management requirements.

A.4(d) Disposal of properties where the size, area, topography, and zoning are similar to existing surrounding properties and/or where current and reasonable anticipated uses are or would be similar to current surrounding uses (*e.g.,* commercial store in a commercial strip, warehouse in an urban complex, office building in downtown area, row house or vacant lot in an urban area).

A.4(e) Demolition, removal and disposal of debris from the demolition or improvement of buildings and other structures neither on nor eligible for listing on the National Register of Historic Places and when under applicable regulations (*i.e.,* removal of asbestos, polychlorinated biphenyls (PCBs),

and other hazardous material) when other environmental laws and regulations will be satisfied prior to the of demolition, removal and disposal.

A.4(f) Relocations and realignments of employees and/or residents from one geographic area to another that: Fall below the thresholds for reportable actions and do not involve related activities such as construction, renovation, or demolition activities that would otherwise require an EA or an EIS to impellent. This includes reorganization and reassignments with no changes in employee and/or resident status, and routine administrative reorganizations and consolidations.

Appendix B to Part 200—The Action Requiring an Environmental Assessment

The following actions are not considered to be major Federal actions significantly affecting the quality of the human environment and, therefore, require an Environmental Impact Statement (EIS) nor are considered a categorical exclusion as defined in these regulations and would require the preparation of an Environmental Assessment (EA):

B.1 Construction on previously disturbed property where there is the potential for an increase in traffic and people.

Appendix C to Part 200—Actions Requiring Environmental Impact Statement

The following actions are considered to be major Federal actions significantly affecting the quality of the human environment, and therefore must be the subjects of EIS, as indicates may have significant environmental effects:

C.1 Acquisition of space by Federal construction or lease construction, or expansion or improvement of an existing facility, where one or more of the following applies:

C.1(a) The structure and/or proposed use are not substantially consistent with local planning and zoning or any applicable State or Federal requirements.

C.1(b) The proposed use will substantially increase the number of motor vehicles at the facility.

C.1(c) The site and scale of construction are not consistent with those of existing adjacent or nearby buildings.

C.1(d) There is evidence of current or potential environmental controversy.

C.2 Space acquisition programs projected for a substantial geographical area (*e.g.,* a metropolitan area) for a 3-to-5-year period or greater (Note: a Programmatic EIS is often appropriate here, from which subsequent EISs and EAs can be tiered).

Dated: October 28, 2009.

Timothy Cox,

Chief Operating Officer.

[FR Doc. E9–26376 Filed 11–6–09; 8:45 am]

BILLING CODE 8250–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0042; FRL–8902–6]

Revisions to the Arizona State Implementation Plan, Maricopa County Air Quality Department and Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern PM–10 emissions from open outdoor fires and indoor fireplaces at commercial and institutional establishments, primary and secondary MCAQD ambient air quality standards, and residential woodburning devices. We are approving local rules under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on January 8, 2010 without further notice, unless EPA receives adverse comments by December 9, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0042, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
- *E-mail: steckel.andrew@epa.gov.*
- *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Alfred Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that the rules were amended by the local air agencies and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1—SUBMITTED RULES

Local agency	Ordinance or rule No.	Rule title	Revised or adopted	Submitted
MCAQD	Rule 314	Open Outdoor Fires and Indoor Fireplaces at Commercial and Institutional Establishments.	03/12/08 Revised	07/10/08
MCAQD	Rule 510	Air Quality Standards	11/01/06 Adopted	06/07/07
MC	Ordinance P–26	Residential Woodburning Restriction Ordinance	03/26/08 Revised	07/10/08

On January 11, 2009, the submittal of MCAQD Rule 314 and MC Ordinance P–26 was determined by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On December 6, 2007, the submittal of MCAQD Rule 510 was determined by operation of law to meet the completeness criteria.

B. Are there other versions of these rules?

There is no previous version of MC Ordinance P–26 submitted or in the SIP.

A version of MCAQD Rule 314 was approved into the SIP on May 8, 2007 (72 FR 25973). Obsolete versions of the SIP Rules 50, 51, 52, and 53 were approved into the SIP on July 27, 1972 (37 FR 15081) and should be removed from the SIP.

A version of MCAQD Rule 510 on which we have not acted, was adopted on July 13, 1988 and submitted on January 4, 1990. While we can act only on the most recent version, we have considered the contents of the previous submittal.

C. What are the purposes of the submitted rule revisions?

Section 110(a) of the Clean Air Act (CAA) requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of local air districts' programs to control these pollutants.

The purposes of revisions to MCAQD Rule 314 are as follows:

- *314.202:* Area A is defined (generally the highly-populated area of Maricopa County (MC)).
- *314.302.1:* A list of fires prohibited during restricted-burn periods in MC, but allowed from May 1 through September 30 in Area A, is revised.
- *314.302.2:* A list of fires prohibited during restricted-burn periods in MC and also prohibited from May 1 to September 30 in Area A is revised.
- *314.303.1:* A list of fires allowed any time of the year in MC or Area A is revised.
- *314.303.2:* A list of fires prohibited during restricted-burn periods in MC is revised.
- *314.303.3:* A list of fires prohibited during restricted-burn periods in MC and also prohibited from May 1 through September 30 in Area A is revised. Woodburning chimineas and fire pits are added to the applicability of the rule.
- *314.302.1 and 314.302.2:* A list of fires that require burn permits from the MCAQD is revised. A list of other fires prohibited during restricted-burn periods, but that may be set after a person verifies with the MCAQD that a restricted-burn period is not in effect, is revised.
- *314.304:* Air curtain destructor burning requires a Title V permit from the ADEQ and a site-specific burn plan. Procedures for the air curtain destructor in Rule 314.appendix are revised.
- *314.306:* The burning is prohibited in indoor fireplaces at commercial and institutional establishments during a restricted-burn period, except for gaseous fuels.

The purposes of MCAQD Rule 510 are as follows:

- The rule establishes maximum limiting levels of ambient air pollutants for protection of human health and public welfare.
- The rule requires public notification on ambient air quality through an Annual Air Quality Monitoring Report and a Daily Air Quality Index Report.

The purposes of revisions to MC Ordinance P–16 are as follows:

- *P–26.(overall):* Various definitions are added or revised. Civil penalties are added for failure to curtail burning as required on restricted burn days.
- *P–26.1.B:* Barbecue devices and mesquite grills are removed from the applicability of the ordinance.
- *P–26.2.G:* The moisture content of appropriate fuels is reduced to 20% from 30%.
- *P–26.2:* Standards for curtailment of burning are added for PM–2.5 and ozone in addition to the existing standard for PM–10. The National Ambient Air Quality Standards for particulate matter are added for the new PM–2.5 standard in addition to the existing standard for PM–10. The requirement that County Buildings Codes supersede the requirements of Ordinance P–26 is added.
- *P–26.3.A:* Restricted-burn periods declarations are expanded to every day of the year.
- *P–26.3.B:* There is added the prohibition to operate outdoor fire pits, woodburning chimineas, or similar outdoor devices during a restricted-burn period such that there are visible smoke emissions. Such devices must be installed per the manufacturer's instructions and operated with manufacturer's recommended fuel.
- *P–26.3.C:* There is clarified that during a restricted-burn period, a person may operate a residential woodburning device if exempted by the Control Officer or if it meets the standards of MCAQD Rule 318 and there is no visible smoke emission. There is added that during a restricted-burn period, a person may operate a residential woodburning device, outdoor fire pit, chiminea, or similar outdoor fire if operated exclusively with natural gas or propane.
- *P–26.3.D:* The possibility of exceeding the ozone standard is added as a criterion for declaring a restricted-burn period.

EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). SIP rules in serious PM–10 nonattainment areas must require for significant sources best available control measures (BACM), including best available control technology (BACT) (see section 189(b)). MCAQD regulates a serious PM–10 nonattainment area (see 40 CFR part 81), so MCAQD Rule 314 must fulfill the requirements of BACM/BACT. MCAQD Rule 510 is an administrative rule with no specific BACM/BACT requirements.

Guidance and policy documents that we used to help evaluate rules consistently include the following:

- *PM–10 Guideline Document* (EPA–452/R–93–008).
- *Technical Information Document for Residential Wood Combustion Best Available Control Measures*, (EPA–450/2–92–002).
- *Minimum BACM/RACM Control Measures for Residential Wood Combustion Rules*, EPA Region IX (September 16, 2008).

B. Do the rules meet the evaluation criteria?

We believe that MC Rules 314 and 510 and MC Ordinance P–26 are consistent with the relevant policy and guidance regarding enforceability, BACM/BACT, and SIP relaxations and should be given full approval. The TSD has more information on our evaluation.

C. EPA recommendation to further improve a rule

The TSD describes an additional rule revision that does not affect EPA's current action but is recommended for the next time the local agency modifies MCAQD Rule 510.

D. Public comment and final action

Because EPA believes that submitted MCAQD Rules 314 and 510 and MC Ordinance P–26 fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the CAA. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *January 8, 2010.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 12, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Editorial Note: This document was received by the Office of the Federal Register on November 3, 2009.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraphs (c)(140)(i)(B) and (141) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(140) * * *

(i) * * *

(B) Maricopa County Air Quality Department.

(*1*) Rule 510, ''Air Quality Standards,'' excluding Appendix G to the Maricopa County Air Pollution Control Regulations, adopted on July 13, 1988 and revised on November 1, 2006.

* * * * *

(141) The following amended rules were submitted on July 10, 2008, by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County.

(*1*) Ordinance P–26, ''Residential Woodburning Restriction Ordinance,'' adopted on October 5, 1994 and revised on March 26, 2008.

(B) Maricopa County Air Quality Department.

(*1*) Rule 314, ''Open Outdoor Fires and Indoor Fireplaces at Commercial and Institutional Establishments,'' adopted on July 13, 1988 and revised on March 12, 2008.

* * * * *

[FR Doc. E9–26861 Filed 11–6–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS–R9–MB–2009–0003]
[91200–1231–9BPP–L2]

[RIN 1018–AW46]

Migratory Bird Hunting; Approval of Tungsten-Iron-Fluoropolymer Shot Alloys as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correcting amendment.

SUMMARY: On October 20, 2009, we, the U.S. Fish and Wildlife Service, published a final rule approving tungsten-iron-fluoropolymer (TIF) shot for hunting waterfowl and coots. The information provided in that rule regarding appropriate field testing devices for this type of nontoxic shot contained an error. We now correct that error.

DATES: This rule takes effect on November 9, 2009.

FOR FURTHER INFORMATION CONTACT: George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703-358-1825).

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2009, we published a final rule with an immediate effective date to approve tungsten-iron-fluoropolymer (TIF) shot for hunting waterfowl and coots (74 FR 53665). Our changes to the Code of Federal Regulations (CFR) at 50 CFR 20.21(j) indicated that a magnet or a Hot Shot® device was suitable for testing shotshells loaded with TIF in the field. However, a regular magnet is not sufficient for testing the TIF alloys of the highest sectional densities.

We amend our table of approved nontoxic shot types at 50 CFR 20.21(j) to clarify that either a rare earth magnet (or a set of small rare earth magnets) or a Hot Shot® device is needed for testing TIF shot in the field. We do so by inserting the words ''rare earth'' at the appropriate place in the table.

This information appears in the last column of the table under the heading ''Field testing device''. The data in this column is strictly informational, not regulatory. Because the nontoxic shot regulations are used by both waterfowl hunters and law enforcement officers, we include information on suitable testing devices as a useful addition to the table.

Administrative Procedure Act

We find good cause to waive notice and comment on this correction, pursuant to 5 U.S.C. 553(b)(3)(B), and the 30–day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary because this rule merely corrects a nonregulatory portion of the regulations. The substance of the regulations remains unchanged. Therefore, this correction is being published as a final regulation and is effective as shown under DATES.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ Accordingly, we amend part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703-712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a-j; Pub. L. 106-108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

■ 2. Amend § 20.21(j) by adding the words ''Rare Earth'' in front of the word ''Magnet'' in the last column and last row of the table.

Dated: November 4, 2009

Sara Prigan,

Federal Register Liaison.

[FR Doc. E9–26912 Filed 11–06–09; 8:45 am]

BILLING CODE 4310–55–S

Proposed Rules

Federal Register
Vol. 74, No. 215
Monday, November 9, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0831; Airspace Docket No. 09–ANM–13]

Proposed Amendment of Class D Airspace; North Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class D airspace at Southwest Oregon Regional Airport, North Bend, OR. A portion of the airspace would be modified to allow aircraft at Sunnyhill Airport to arrive and depart outside Class D airspace. This action is necessary for the safety and management of Instrument Flight Rules (IFR) aircraft utilizing both airports.

DATES: Comments must be received on or before December 24, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–0831; Airspace Docket No. 09–ANM–13, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2009–0831 and Airspace Docket No. 09–ANM–13) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–0831 and Airspace Docket No. 09–ANM–13''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the **Federal Register**'s web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class D airspace at Southwest Oregon Regional Airport, North Bend, OR. Controlled airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Southwest Oregon Regional Airport, North Bend, OR, excluding that airspace within a 1.5-mile radius of Sunnyhill Airport, is required for IFR operations at Southwest Oregon Regional Airport, and Sunnyhill Airport, North Bend, OR. Class D airspace designations are published in paragraph 5000, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII,

Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103.

Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Southwest Oregon Regional Airport, North Bend, OR.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ANM OR D North Bend, OR [Modified]

Southwest Oregon Regional Airport, OR
(Lat. 43°25′01″ N., long. 124°14′49″ W.)
Sunnyhill Airport, OR
(Lat. 43°28′59″ N., long. 124°12′10″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of the Southwest Oregon Regional Airport excluding that airspace with a 1.5-mile radius of Sunnyhill Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on *October 29, 2009.*

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–26975 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0926; Airspace Docket No. 09–ASW–26]

Proposed Amendment of Class E Airspace; Dallas-Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace in the Dallas-Fort Worth, TX area. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Bridgeport Municipal Airport, Bridgeport, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Bridgeport Municipal Airport.

DATES: 0901 UTC. Comments must be received on or before December 24, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0926/Airspace Docket No. 09–ASW–26, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0926/Airspace Docket No. 09–ASW–26.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs operations in the Dallas-Fort Worth, TX area at Bridgeport Municipal Airport, Bridgeport, TX. Adjustments to the geographic coordinates would be made in accordance with the FAAs National Aeronautical Charting Office, as well as

a name change for McKinney Municipal Airport. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace in the Dallas—Fort Worth, TX airspace area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

ASW TX E5 Dallas-Fort Worth, TX [Amended]

Dallas-Fort Worth International Airport, TX
(Lat. 32°53′49″ N., long. 97°02′17″ W.)
McKinney, Collin County Regional Airport, TX
(Lat. 33°10′41″ N., long. 96°35′26″ W.)
Rockwall, Rockwall Municipal Airport, TX
(Lat. 32°55′50″ N., long. 96°26′08″ W.)
Mesquite, Mesquite Metro Airport, TX
(Lat. 32°44′49″ N., long. 96°31′50″ W.)
Mesquite NDB
(Lat. 32°48′34″ N., long. 96°31′45″ W.)
Mesquite Metro ILS Localizer
(Lat. 32°44′03″ N., long. 96°31′50″ W.)
Lancaster, Lancaster Airport, TX
(Lat. 32°34′45″ N., long. 96°43′09″ W.)
Lancaster NDB
(Lat. 32°34′40″ N., long. 96°43′18″ W.)
Point of Origin
(Lat. 32°51′57″ N., long. 97°01′41″ W.)
Fort Worth, Fort Worth Spinks Airport, TX
(Lat. 32°33′55″ N., long. 97°18′29″ W.)
Cleburne, Cleburne Municipal Airport, TX
(Lat. 32°21′14″ N., long. 97°26′02″ W.)
Ft. Worth, Bourland Field Airport, TX
(Lat. 32°34′54″ N., long. 97°35′27″ W.)
Granbury, Granbury Regional Airport, TX
(Lat. 32°26′40″ N., long. 97°49′01″ W.)
Weatherford, Parker County Airport, TX
(Lat. 32°44′47″ N., long. 97°40′57″ W.)
Bridgeport, Bridgeport Municipal Airport, TX
(Lat. 33°10′31″ N., long. 97°49′42″ W.)
Decatur, Decatur Municipal Airport, TX
(Lat. 33°15′15″ N., long. 97°34′50″ W.)

That airspace extending upward from 700 feet above the surface within a 30-mile radius of Dallas-Fort Worth International Airport, and within a 6.6-mile radius of Collin County Regional Airport at McKinney, and within 1.8 miles each side of the 002° bearing from the Collin County Regional Airport at McKinney extending from the 6.6-mile radius to 9.2 miles north of the airport, and within a 6.3-mile radius of Rockwall Municipal Airport, and within 1.6 miles each side of the 010° bearing from the Rockwall Municipal Airport extending from the 6.3-mile radius to 10.8 miles north of the airport, and within a 6.5-mile radius of Mesquite Metro Airport, and within 8 miles east and 4 miles west of the 001° bearing from the Mesquite NDB extending from the 6.5-mile radius to 19.7 miles north of the airport, and within 1.7 miles each side of the Mesquite Metro ILS Localizer south course extending from the 6.5-mile radius to 11.1 miles south of the airport, and within a 6.5-mile radius of the Lancaster Airport, and within 8 miles west and 4 miles east of the 129° bearing from the Lancaster NDB extending from the 6.5-mile radius to 16 miles southeast of the NDB, and within 8 miles northeast and 4 miles southwest of the 144° bearing from the Point of Origin extending from the 30-mile radius of Dallas-Fort Worth International Airport to 35 miles southeast of the Point of Origin, and within a 6.5-mile radius of Fort Worth Spinks Airport, and within 8 miles east and 4 miles west of the 178° bearing from Fort Worth Spinks Airport extending from the 6.5-mile radius to 21 miles south of the airport, and within a 6.9-mile radius of Cleburne Municipal Airport, and within 3.6 miles each side of the 292° bearing from the airport extending from the 6.9-mile radius to 12.2 miles northwest of Cleburne Municipal Airport, and within a 6.5-mile radius of Fort Worth's Bourland Field Airport, and within a 6.3-mile radius of Granbury Regional Airport, and within a 6.3-mile radius of Weatherford's Parker County Airport, and within 8 miles east and 4 miles west of the 177° bearing from Parker County Airport extending from the 6.3-mile radius to 21.4 miles south of the airport, and within a 6.3-mile radius of Bridgeport Municipal Airport, and within 1.6 miles each side of the 040° bearing from Bridgeport Municipal Airport extending from the 6.3-mile radius to 10.6 miles northeast of the airport, and within 4 miles each side of the 001° bearing from the Bridgeport Municipal Airport extending from the 6.3-mile radius to 10.7 miles north of the airport, and within a 6.3-mile radius of Decatur Municipal Airport, and within 1.5 miles each side of the 263° bearing from Decatur Municipal Airport extending from the 6.3-mile radius to 9.2 miles west of the airport.

* * * * *

Issued in Fort Worth, TX, on October 14, 2009.

Roger M. Trevino,

Manager, Operations Support Group,

ATO Central Service Center.

[FR Doc. E9–26967 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0929; Airspace Docket No. 09–AGL–32]

Proposed Amendment of Class E Airspace; Lima, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Lima, OH. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Lima Allen County Airport, Lima, OH. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Lima Allen County Airport.

DATES: 0901 UTC. Comments must be received on or before December 24, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0929/Airspace Docket No. 09–AGL–32, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0929/Airspace Docket No. 09–AGL–32.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Lima Allen County Airport, Lima, OH. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Lima Allen County Airport, Lima, OH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

AGL OH E5 Lima, OH [Amended]

Lima Allen County Airport, OH
(Lat. 40°42′25″ N., long. 84°01′36″ W.)
Allen County VOR
(Lat. 40°42′26″ N., long. 83°58′05″ W.)
Saint Rita's Medical Center, OH
Point in Space Coordinates
(Lat. 40°43′58″ N., long. 84°06′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Lima Allen County Airport and

within 3 miles each side of the Allen County VOR 090° radial extending from the 6.6-mile radius to 7.4 miles east of the VOR, and within a 6-mile radius of the Point in Space serving Saint Rita's Medical Center, excluding the airspace within the Findlay, OH Class E airspace area.

* * * * *

Issued in Fort Worth, TX on October 14, 2009.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–26969 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0927; Airspace Docket No. 09–ASW–27]

Proposed Amendment of Class E Airspace; Graford, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Graford, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Possum Kingdom Airport, Graford, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Possum Kingdom Airport.

DATES: 0901 UTC. Comments must be received on or before December 24, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0927/Airspace Docket No. 09–ASW–27, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0927/Airspace Docket No. 09–ASW–27.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Possum Kingdom Airport, Graford, TX. Adjustments to the geographic coordinates would be made in accordance with the FAAs National Aeronautical Charting Office. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Possum Kingdom Airport, Graford, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

ASW TX E5 Graford, TX [Amended]

Possum Kingdom Airport, TX
(Lat. 32°55′24″ N., long. 98°26′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Possum Kingdom Airport and within 4 miles each side of the 031° bearing from the airport extending from the 6.3-mile radius to 10.8 miles northeast of the airport, and within 4 miles each side of the 210° bearing from the airport extending from the 6.3-mile radius to 10.8 miles southwest of the airport.

* * * * *

Issued in Fort Worth, TX, on October 14, 2009.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–26970 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0880; Airspace Docket No. 09–ANM–14]

Proposed Amendment to Class E Airspace; Rawlins, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Rawlins Municipal/Harvey Field, Rawlins, WY. Additional controlled airspace is necessary to accommodate aircraft using the Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Rawlins Municipal/Harvey Field, Rawlins, WY. The FAA is proposing this action to enhance the safety and management of aircraft operations at Rawlins Municipal/Harvey Field, Rawlins, WY. This will also update the airport name from Rawlins Municipal Airport.

DATES: Comments must be received on or before December 24, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–0880; Airspace Docket No. 09–ANM–14, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2009–0880 and Airspace Docket No. 09–ANM–14) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–0880 and Airspace Docket No. 09–ANM–14''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace at Rawlins Municipal/Harvey Field, Rawlins, WY. Controlled airspace is necessary to accommodate aircraft using the RNAV (GPS) SIAP at Rawlins Municipal/Harvey Field, Rawlins, WY. This action would enhance the safety and management of aircraft operations at Rawlins Municipal/Harvey Field, Rawlins, WY. This would also update the airport name from Rawlins Municipal Airport to Rawlins Municipal/Harvey Field.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Rawlins Municipal/Harvey Field, Rawlins, WY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WY E2 Rawlins, WY [Amended]

Rawlins Municipal/Harvey Field, Rawlins, WY
(Lat. 41°48′20″ N., long. 107°12′00″ W.)
Sinclair NDB
(Lat. 41°48′07″ N., long. 107°05′32″ W.)

Within a 4.3-mile radius of the Rawlins Municipal/Harvey Field and within 4.3 miles north and 3 miles south of the 089° bearing from the Sinclair NDB extending from the 4.3-mile radius to 2.2 miles east of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ANM WY E5 Rawlins, WY [Modified]

Rawlins Municipal/Harvey Field, Rawlins, WY
(Lat. 41°48′20″ N., long. 107°12′00″ W.)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of the Rawlins Municipal/Harvey Field Airport, and within 4.3 miles each side of the 090° bearing from the Rawlins Municipal/Harvey Field Airport extending from the Airport to 15 miles east; that airspace extending upward from 1,200 feet above the surface beginning at lat. 41°30′20″ N., long. 107°59′26″ W.; to lat. 41°51′51″ N., long. 108°04′00″ W.; lat. 41°55′28″ N., long. 107°32′00″ W.; to lat. 42°20′33″ N., long. 107°07′43″ W.; to lat. 42°02′42″ N., long. 106°33′00″ W.; to lat. 41°52′00″ N., long. 106°42′00″ W.; to lat. 41°45′00″ N., long. 106°41′00″ W.; to lat. 41°28′21″ N., long. 106°37′13″ W.; to lat. 41°36′20″ N., long. 107°08′23″ W.; to the point of the beginning.

* * * * *

Issued in Seattle, Washington, on October 28, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–26974 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0042; FRL–8902–7]

Revisions to the Arizona State Implementation Plan, Maricopa County Air Quality Department and Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Maricopa County Air Quality Department (MCAQD) and Maricopa County portions of the Arizona State Implementation Plan (SIP). These revisions concern PM–10 emissions from open outdoor fires and indoor fireplaces at commercial and institutional establishments, primary and secondary MCAQD ambient air quality standards, and residential woodburning devices. We are proposing approval of local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by *December 9, 2009.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0042, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
- *E-mail: steckel.andrew@epa.gov.*
- *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local MCAQD Rules 314 and 510 and MC Ordinance P–26. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 13, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Editorial Note: This document was received by the Office of the Federal Register on November 3, 2009.

[FR Doc. E9–26860 Filed 11–6–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0108]

Final Vehicle Safety Rulemaking and Research Priority Plan 2009–2011

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Plan availability.

SUMMARY: This document announces the availability of the Final Vehicle Safety Rulemaking and Research Priority Plan 2009–2011 (Priority Plan) in Docket No. NHTSA–2009–0108. The draft Priority Plan was announced in a Request for Comment published in the **Federal Register** on July 1, 2009. This document also summarizes the public comments received in response to that Request for Comments, and announces NHTSA's intent to incorporate those comments in the process of developing a longer-term motor vehicle safety strategic plan that would encompass the period 2010 to 2020, and will be announced in a separate **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Carra, Director of Strategic Planning and Integration, National Highway Traffic Safety Administration, Room W48–318, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–0361. E-mail: *joseph.carra@dot.gov*

SUPPLEMENTARY INFORMATION: On July 1, 2009, NHTSA published a Request for Comments (RFC) in the **Federal Register** (74 FR 31387) seeking public comment on the NHTSA Vehicle Safety Rulemaking and Research Priority Plan 2009–2011 (Priority Plan).

NHTSA received 29 comments on the July 2009 RFC, from vehicle manufacturers (Ford; Fuji Heavy Industries USA (Subaru)), parts suppliers (Delphi; Bendix), industry organizations and associations (Alliance of Automobile Manufacturers (Alliance); American Trucking Association (ATA); Heavy Duty Brake Manufacturers Association), automobile safety advocates (Advocates for Highway and Auto Safety (Advocates); Safe Kids USA; SafetyBeltSafe USA; Automotive Occupant Restraints Council (AORC), and concerned organizations and individuals (The Center for Injury Research and Prevention at the Children's Hospital of Philadelphia (CHOP); Safe Ride News; John Walsh; William M. Gorman; Karen Ahmed). All of the comments on the NHTSA Vehicle Safety Rulemaking and Research Priority Plan 2009–2011 can be reviewed in *http://www.regulations.gov* (see Docket No. NHTSA–2009–0108).

Most commenters expressed general support of the Priority Plan, with several commenters commending NHTSA for publishing the RFC and allowing public comment. Two commenters noted that periodic publication of the Priority Plan, along with status updates, is good public policy and that it would help them align their own research plans. Commenters generally agreed with the priority areas NHTSA identified in the plan. Several of them suggested some additional projects that the Agency should consider within the areas of child safety, crash avoidance and crash mitigation technologies, drowsy, distracted and impaired drivers, and heavy truck stability control.

Several commenters suggested that it would be helpful if the plan more clearly explained how short-term priorities fit into NHTSA's overall mission to reduce fatalities and injuries in automobile crashes, and requested opportunities to meet to further discuss research plans and intermediate milestones. One commenter applauded the plan for being aggressive on behalf of highway safety. One commenter felt that the Priority Plan had serious deficiencies in that, in their view, it did not adequately address very specific areas including motorcoaches and related NTSB recommendations, crash compatibility regulatory action, older occupant protection, ejection mitigation regulatory action, glazing performance standards, consumer tire ratings beyond consumer information, remanufactured heavy vehicle truck tires, and motorcycle initiatives. That commenter suggested that these perceived deficiencies be corrected in the long-term plan. One commenter expressed concern that the Agency may not be adequately funded to achieve the goals delineated in the Priority Plan. Finally, several commenters discussed ways to improve crash datasets and to leverage existing SAE standards.

NHTSA appreciates the public response to the July 2009 RFC regarding the short-term Priority Plan, and looks forward to continuing to engage stakeholders in the planning and formulation of priority research and rulemaking activities in order to further its mission of reducing fatalities and injuries in crashes on the nation's roadways. In considering the breadth and strategic nature of the comments received, the Agency has determined that communication of how the Priority

Plan fits within the over-arching framework of its program goals is best accomplished by publication of an already-in-process integrated 10 Year Vehicle Safety Strategic Plan (Strategic Plan) that covers both the short-term and long-term priorities of the Agency. Such a Strategic Plan will allow the Agency to communicate its programs and priorities in a longer range strategic context and will serve the interests of the public in understanding and responding to the Agency's goals. Therefore, NHTSA will be considering the comments received in response to the July 2009 RFC in deliberations for developing a Strategic Plan that will cover the time period 2010 through 2020.

For purposes of apprising the public on the status of progress relative to the efforts delineated in the short-term Priority Plan, NHTSA is publishing to the docket referenced above, in conjunction with this Notice, a final version of the Priority Plan which includes updates since it was published in July 2009. Specifically, this final version of the Priority Plan includes updates in the areas of background data analysis, motorcycle braking, New Car Assessment Program Vehicle-Child Restraint System (CRS) fit program, ejection mitigation, power windows, brake transmission shift interlock, child restraints in side impacts, rear visibility of vehicles, fuel economy, consumer tire rating program, motorcycle helmet labeling, compatibility, pedestrian safety, and heavy truck stopping distance. Added to the final plan is a project to finalize a driver distraction plan under the high-priority section ''Light-Vehicle Crash Avoidance and Mitigation—Advanced Technologies.''

Interested persons may obtain a copy of the plan, ''Final Vehicle Safety Rulemaking and Research Priority Plan 2009–2011,'' by downloading a copy of the document. To download a copy of the document, go to *http://www.regulations.gov* and follow the online instructions, or visit Docket Management Facility at the street address listed above under **ADDRESSES** and reference Docket No. NHTSA–2009–0108.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions, or visit Docket Management Facility at the street address listed above.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: November 4, 2009.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. E9–26932 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 74, No. 215
Monday, November 9, 2009

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 4, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Highly Erodible Land Conservation and Wetland Conservation (7 CFR part 12).

OMB Control Number: 0560–0185.

Summary of Collection: The Food Security Act of 1985 as amended by the Federal Agriculture Conservation and Trade Act of 1990 and the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), and the Agricultural Assistance Act of 2003 (the 2003 Act) provides that any person who produces an agricultural commodity on a field that is predominately highly erodible, converts wetland, or plants an agricultural commodity on converted wetland after December 23, 1985, shall be ineligible for certain program benefits. These provisions are an attempt to preserve the nation's wetland and to reduce the rate at which soil is lost from highly erodible land. In order to ensure that persons who request benefits subject to the conservation restrictions get technical assistance needed and are informed regarding the compliance requirements on their land, the Farm Service Agency (FSA) collects information using several forms from producers with regard to their financial activities on their land that could affect their eligibility for requested USDA benefits.

Need and Use of the Information: Information must be collected from producers to certify that they intend to comply with the conservation requirements on their land to maintain their eligibility. Additional information may be collected if producers request that certain activities be exempt from provisions of the statute in order to evaluate whether the exempted conditions will be met. The collection of information allows the FSA county employees to perform the necessary compliance checks and fulfill USDA's objectives towards preserving wetlands and reducing erosion.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, local or tribal government.

Number of Respondents: 262,788.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 262,346.

Ruth Brown,
Departmental Information Collection Clearance Officer.

[FR Doc. E9–26921 Filed 11–6–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Tuesday, November 10, 2009 in Idaho Falls for a 2009 Informational meeting. The meeting is open to the public.

DATES: The meeting will be held on November 10, 2009 from 10 a.m. to 3 p.m.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, ID 83401.

FOR FURTHER INFORMATION CONTACT: Brent Larson, Caribou National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The 2009 informational meeting on November 10, 2009, begins at 10 a.m., at the Caribou National Forest, 1405 Ballpark Drive, Idaho Falls, ID 83401.

Dated: October 22, 2009.

Robbert Mickelsen,
Staff Ecosystem Manager.

[FR Doc. E9–26798 Filed 11–6–09; 8:45 am]

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DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Proposed Information Collection; Comment Request; Hollings Manufacturing Extension Partnership (HMEP) Program Application Requirements.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 1,344.

Number of Respondents: 12.

Average Hours per Response: 112.

Needs and Uses: The objective of the NIST Hollings Manufacturing Extension Partnership Program (HMEP) is to enhance productivity, technological performance, and strengthen the global competitiveness of small- and medium-sized U.S.-based manufacturing firms.

Affected Public: Not-for-profit institutions; State or local government; consortia of not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain benefits.

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

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5806 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: November 4, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–26920 Filed 11–6–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Orion Air, S.L.; Syrian Pearl Airlines

In the Matter of:

Orion Air, S.L., Canada Real de Merinas, 7 Edificio 5, 3'A, Eissenhower Business Center, 28042 Madrid, Spain;

Ad. de las Cortes Valencianas no 37, Esc.A Puerta 45 46015 Valencia, Spain;

Syrian Pearl Airlines, Damascus International Airport, Damascus, Syria; Respondents.

Order Renewing Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR Parts 730–774 (2009) (''EAR'' or the ''Regulations''), I hereby grant the request of the Bureau of Industry and Security (''BIS'') to renew for 180 days the Order Temporarily Denying the Export Privileges of Respondents Orion Air, S.L. and Syrian Pearl Airlines (collectively, ''Respondents''), as I find that renewal of the temporary denial order (''TDO'' or the ''ORDER'') is necessary in the public interest to prevent an imminent violation of the EAR.

I. Procedural History

On May 7, 2009, I signed an Order Temporarily Denying the Export Privileges of the Respondents for 180 days on the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the Regulations. Pursuant to Section 766.24(a), the TDO was issued *ex parte* and was effective upon issuance. Copies of the TDO were sent to each Respondent in accordance with Section 766.5 of the Regulations and the Order was published in the **Federal Register** on May 26, 2009.[1] The TDO would expire on November 3, 2009, unless renewed in accordance with Section 766.24 of the Regulations.

On October 13, 2009, BIS, through its Office of Export Enforcement (''OEE''), filed a written request for renewal of the TDO against the Respondents for 180 days and served a copy of its request on the Respondents in accordance with Section 766.5 of the Regulations. No opposition to renewal of the TDO has been received from either Orion Air or Syrian Pearl Airlines.

II. Discussion

A. Legal Standard

Pursuant to section 766.24(d)(3) of the EAR, the sole issue to be considered in determining whether to continue a TDO is whether the TDO should be renewed to prevent an imminent violation of the EAR as the term ''imminent'' violation is defined in Section 766.24. ''A violation may be 'imminent' either in time or in degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that ''the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical and negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. Findings

As part of its initial TDO request, BIS presented evidence that on or about May 1, 2009, Orion Air re-exported a BAE 146–300 aircraft (tail number EC–JVO), an item subject to the Regulations because the aircraft contains greater than a 10 percent de minimis of U.S.-origin content, to Syria and specifically to Syrian Pearl Airways without the U.S. Government authorization required by General Order No. 2 of Supplement 1 to Part 736 of the EAR. This re-export took place after Orion Air had been directly informed of the export licensing requirements by the U.S. Government, and thus had actual as well as constructive notice of those licensing requirements, and occurred despite assurances made by Orion Air that it would put the transaction on hold based on the U.S. Government's concerns. BIS has also produced evidence that the re-exported aircraft bears the livery, colors and logos of Syrian Pearl Airlines, a national of Syria, a Country Group E:1 destination. The aircraft currently remains in Syria under the control of Syrian Pearl Airways and is flight capable. These facts, in addition to Orion's conscious disregard of U.S. Government warnings, heighten the concerns of further violations in connection with this aircraft should the TDO not be renewed.

Additionally, BIS argued that future violations of the EAR remain imminent based on previous statements by Orion Air to the U.S. Government that Orion Air had planned to re-export an additional BAE 146–300 aircraft, currently located in the United Kingdom, to Syria and specifically to Syrian Pearl Airlines. Evidence indicates that the issuance of the original TDO prevented this unlicensed reexport to Syria, and to date neither Orion nor Syrian Pearl has presented BIS with evidence of an alternative disposition of the second aircraft that is in compliance with the Regulations. Therefore, absent renewal of the TDO, there remains a risk that this aircraft would be reexported contrary to U.S. export control laws.

I find the facts and circumstances here, including those which led to the initial TDO, show that renewal of the

[1] 74 FR 24,786.

TDO for an additional 180 days is necessary and in the public interest to prevent an imminent violation of the EAR. Furthermore, renewal of the Order is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with the Respondents in export transactions involving items subject to the EAR.

It is therefore ordered:

FIRST, that, Orion Air, S.L., Canada Real de Merinas, 7 Edificio 5, 3'A, Eissenhower business center, 28042 Madrid, Spain, and Ad. de las Cortes Valencianas no 37, Esc.A Puerta 4546015 Valencia, Spain; and Syrian Pearl Airlines, Damascus International Airport, Damascus, Syria. (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

SECOND, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by any Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby any Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from any Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from any Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by any Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by any Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and shall be published in the **Federal Register.**

This Order is effective upon issuance and shall remain in effect for 180 days.

Entered this 2nd day of November 2009.

Kevin Delli-Colli,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. E9–26946 Filed 11–6–09; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809]

Stainless Steel Plate in Coils From Belgium: Final Results of Countervailing Duty Administrative Review

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

SUMMARY: On June 4, 2009, the U.S. Department of Commerce (''the Department'') published in the **Federal Register** its *Preliminary Results* of the administrative review of the countervailing duty order on stainless steel plate in coils (''SSPC'') from Belgium for the period January 1, 2007, through December 31, 2007. *See Stainless Steel Plate in Coils from Belgium: Preliminary Results of Countervailing Duty Administrative Review,* 74 FR 26844 (June 4, 2009) (''*Preliminary Results*'').

On September 16, 2009, the Department issued a post-preliminary analysis regarding certain additional information placed on the record of this administrative review after the *Preliminary Results* were issued. We provided interested parties an opportunity to comment on our *Preliminary Results* and our post-preliminary analysis. The final results do not differ from the *Preliminary Results,* where we found the net subsidy rate to be zero.

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

FOR FURTHER INFORMATION CONTACT: Alexander Montoro or Mary Kolberg, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0238 and (202) 482–1785, respectively.

SUPPLEMENTARY INFORMATION:

Background

The following events have occurred since the publication of the *Preliminary Results* of this review. On July 9, 2009, the Department extended the briefing and hearing schedules in order to provide parties with additional time to consider the results of the Department's post-preliminary analysis.

As noted in the *Preliminary Results,* the Government of Belgium (''GOB'') requested an extension to file its response to the Department's May 4, 2009, supplemental questionnaire, which we granted. *See Preliminary Results* at 26844. The GOB submitted

that response on July 6, 2009. On September 16, 2009, the Department issued a post-preliminary analysis regarding a research and development program administered by the Institute for the Promotion of Innovation by Science and Technology in Flanders. *See* Memorandum to Carole A. Showers, Acting Deputy Assistant Secretary for Policy and Negotiations, from David Layton and Mary Kolberg: Post-Preliminary Findings (September 18, 2008) (''Post-Prelim Analysis'').

On September 25, 2009, we extended the time limit for the final results of this administrative review by 30 days (to November 2, 2009), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''). *See Stainless Steel Plate in Coils from Belgium: Extension of Time Limit for the Final Results of the Ninth Countervailing Duty Administrative Review,* 74 FR 48904 (September 25, 2009).

The Department received case briefs from ArcelorMittal Stainless Belgium (''AMS Belgium'') [1] and the GOB on September 29, 2009. No rebuttal briefs were filed. The Department did not conduct a hearing in this review because none was requested.

Period of Review

The period of review (''POR'') for which we are measuring subsidies is January 1, 2007, through December 31, 2007.

Scope of the Order

The products covered by this order are imports of certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm [2] or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.,* cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.06, 7219.12.00.20, 7219.12.00.21, 7219.12.00.25, 7219.12.00.26, 7219.12.00.50, 7219.12.00.51, 7219.12.00.55, 7219.12.00.56, 7219.12.00.65, 7219.12.00.66, 7219.12.00.70, 7219.12.00.71, 7219.12.00.80, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the November 2, 2009, Issues and Decision Memorandum for the Final Results of the Ninth (2007) Administrative Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from Belgium (''Decision Memorandum''), from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which interested parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room 1117 of the main Department building (''CRU''). In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We find that AMS Belgium, the only producer/exporter subject to this administrative review, had no countervailable subsidies during the POR. Therefore, for the period January 1, 2007, through December 31, 2007, we determine the net subsidy rate for AMS Belgium to be 0.00 percent *ad valorem.*

Assessment Rates

Because the countervailing duty rate for AMS Belgium is zero, we will instruct U.S. Customs and Border Protection (''CBP'') to liquidate shipments of SSPC by AMS Belgium [3] during the period January 1, 2007, through December 31, 2007, without regard to countervailing duties in accordance with 19 CFR 351.106(c). The Department will issue appropriate instructions directly to CBP 15 days after publication of these final results of this review. However, pursuant to an injunction issued in *ArcelorMittal Stainless Belgium N.V.* v. *United States,* U.S. Court of International Trade Case No. 08–00434, on January 16, 2009, the Department must continue to suspend liquidation of entries made by AMS Belgium pending a conclusive court decision in that action.

Cash Deposits

Since the countervailable subsidy rate for AMS Belgium is zero, the Department will instruct CBP to

[1] The review was originally requested by U&A Belgium. The company previously known as U&A Belgium stated in questionnaire responses that its name changed to ArcelorMittal Stainless Belgium (''AMS Belgium'') during the period of review (''POR'') pursuant to the merger of Mittal Steel NV with Arcelor S.A. completed on November 11, 2007. *See* AMS Belgium Questionnaire Response dated October 22, 2008 (''AMS QR'') at page 1, footnote 1, and page 4, footnote 2.

[2] On May 11, 2007, the Department received a scope inquiry request from U&A Belgium regarding whether the scope of the orders on SSPC from Belgium excludes stainless steel products with an actual thickness less than 4.75 mm, regardless of its nominal thickness. The Department conducted a scope inquiry applicable to all countries subject to the SSPC antidumping and countervailing duty orders. In the Department's scope ruling, dated December 3, 2008, the Department determined that SSPC with a nominal thickness of 4.75 mm, but with an actual thickness less than 4.75 mm, and within the dimensional tolerances for this thickness of plate, is included in the scope of the antidumping duty orders on SSPC from Belgium, Italy, South Africa, the Republic of Korea, and Taiwan and countervailing duty orders on SSPC from Belgium and South Africa. *See* Memorandum from Melissa G. Skinner to Stephen J. Claeys titled ''Stainless Steel Plate in Coils from Belgium: Final Scope Ruling,'' dated December 3, 2008.

[3] During the current review AMS Belgium has placed the following information on the record. In 2006, U&A Belgium's parent company, Arcelor S.A., agreed to merge with Mittal Steel N.V. This merger was completed on November 13, 2007. As a result of this merger, U&A Belgium became AMS Belgium on November 13, 2007. The Department has reviewed the information provided by AMS Belgium with regard to the merger and evaluated the company and its affiliates for receipt of countervailable subsidies. In addition, we have reviewed entry data provided by CBP to confirm that U&A Belgium is the only manufacturer of subject merchandise exported from Belgium during the POR. For countervailing duty review purposes, we will consider U&A Belgium to be AMS Belgium for cash deposit purposes. Since the merger happened during the POR, we will issue assessment instructions for both U&A Belgium and AMS Belgium.

continue to suspend liquidation of entries, but to collect no cash deposits of estimated countervailing duties for AMS Belgium on all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

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

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

Dated: November 2, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: Error in the Department's Draft Liquidation Instructions

Comment 2: Department's Authority to Investigate IWT Program

[FR Doc. E9–26940 Filed 11–6–09; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1649]

Expansion of Foreign-Trade Zone 123, Denver, CO

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

Whereas, the City and County of Denver, grantee of Foreign-Trade Zone No. 123, submitted an application to the Board for authority to expand FTZ 123 to include the jet fuel storage and distribution facilities at the Denver International Airport, within the Denver Customs and Border Protection port of entry (FTZ Docket 73–2008, filed 12/24/2008);

Whereas, notice inviting public comment was given in the *Federal Register* (74 FR 2046, 1/14/2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

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

Now, Therefore, the Board hereby orders:

The application to expand FTZ 123 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 23rd day of October 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–26937 Filed 11–6–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–950]

Wire Decking From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of wire decking from the People's Republic of China (the PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: November 9, 2009.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or John Conniff, AD/CVD Operations, Office 3, Operations, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793 and (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On June 5, 2009, the Department received the petition filed in proper form by the petitioners.[1] This investigation was initiated on June 25, 2009. *See Wire Decking From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 31700 (July 2, 2009) (*Initiation Notice*), and accompanying Initiation Checklist.[2]

As explained in the *Initiation Notice*, the categories of the Harmonized Tariff Schedule of the United States (HTSUS) that include subject merchandise are very broad and include products other than those subject to this investigation. *See* 74 FR at 31704. Therefore, on June 26, 2009, the Department requested Quantity and Value (Q&V) information from the 83 companies that petitioners identified as potential producers/exporters of wire decking in the PRC. *See* Q&V Questionnaire (June 26, 2009); *see also* Petition for the Imposition of Antidumping and Countervailing Duties on Wire Decking from the People's Republic of China (June 5, 2009) (Petition) at Volume I, Exhibit 4, for the list of wire decking producers/exporters.[3] We received Q&V questionnaire responses from 10 producers/exporters of wire decking.

On July 16, 2009, we selected two Chinese producers/exporters of wire decking as mandatory respondents: Dalian Huameilong Metal Products Co., Ltd. (DHMP) and Dalian Eastfound Metal Products Co., Ltd. (Eastfound Metal) and its affiliate Dalian Eastfound Material Handling Products Co., Ltd. (Eastfound Material) (collectively, Eastfound). *See* Memorandum from the Team through Melissa G. Skinner, Director, AD/CVD Operations, Office 3, to John M. Andersen, Acting Deputy Assistant Secretary for AD/CVD Operations, regarding ''Respondent Selection'' (July 16, 2009). Also on July 16, 2009, we issued the initial countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (the GOC) and the

[1] Petitioners are AWP Industries, Inc., ITC Manufacturing, Inc., J&L Wire Cloth, Inc., Nashville Wire Products Mfg., Co., Inc., and Wireway Husky Corporation.

[2] A public version of this and all public Departmental memoranda are on file in the Central Records Unit (CRU), room 1117 in the main building of the Commerce Department.

[3] The Petition is a proprietary document for which the public version is on file in the CRU.

mandatory respondents. We received Eastfound Metal's, Eastfound Material's and DHMP's initial questionnaire responses on September 9, 2009. On September 10, 2009, we received the GOC's initial questionnaire response.

On August 13, 2009, the Department postponed the deadline for the preliminary determination by 65 days to no later than November 2, 2009. *See Wire Decking From the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 74 FR 40812 (August 13, 2009).

Regarding supplemental questionnaires, we issued to the GOC supplemental questionnaires on September 16, 18, and 22, 2009, and October 1, 14, and 22, 2009,[4] to which the GOC submitted responses on September 29, 2009, and October 5, 15, 21, and 26, 2009.

We issued supplemental questionnaires to Eastfound Metal on September 17, 2009, and October 14, 2009, and received responses on October 19, 2009, October 20, 2009,[5] and October 23, 2009. On September 23, 2009, we issued a supplemental questionnaire to Eastfound Material and the company submitted its response on October 15, 2009.

We issued supplemental questionnaires to DHMP on September 18, 2009 and October 15, 2009 and received responses on October 2, 2009 and October 22, 2009. Additionally, DHMP made submissions on September 14, 2009 and October 26, 2009.

Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to the most recently completed fiscal year. *See* 19 CFR 351.204(b)(2).

Scope of the Investigation

The scope of the investigation covers welded–wire rack decking, which is also known as, among other things, ''pallet rack decking,'' ''wire rack decking,'' ''wire mesh decking,'' ''bulk storage shelving,'' or ''welded–wire decking.'' Wire decking consists of wire mesh that is reinforced with structural supports and designed to be load bearing. The structural supports include sheet metal support channels, or other structural supports, that reinforce the wire mesh and that are welded or otherwise affixed to the wire mesh, regardless of whether the wire mesh and supports are assembled or unassembled and whether shipped as a kit or packaged separately. Wire decking is produced from carbon or alloy steel wire that has been welded into a mesh pattern. The wire may be galvanized or plated (*e.g.*, chrome, zinc, or nickel coated), coated (*e.g.*, with paint, epoxy, or plastic), or uncoated (''raw''). The wire may be drawn or rolled and may have a round, square or other profile. Wire decking is sold in a variety of wire gauges. The wire diameters used in the decking mesh are 0.105 inches or greater for round wire. For wire other than round wire, the distance between any two points on a cross–section of the wire is 0.105 inches or greater. Wire decking reinforced with structural supports is designed generally for industrial and other commercial storage rack systems.

Wire decking is produced to various profiles, including, but not limited to, a flat (''flush'') profile, an upward curved back edge profile (''backstop'') or downward curved edge profile (''waterfalls''), depending on the rack storage system. The wire decking may or may not be anchored to the rack storage system. The scope does not cover the metal rack storage system, comprised of metal uprights and cross beams, on which the wire decking is ultimately installed. Also excluded from the scope is wire mesh shelving that is not reinforced with structural supports and is designed for use without structural supports.

Wire decking enters the United States through several basket categories in the HTSUS. U.S. Customs and Border Protection (CBP) has issued a ruling (NY F84777) that wire decking is to be classified under HTSUS 9403.90.8040. Wire decking has also been entered under HTSUS 7217.10, 7217.20, 7326.20, 7326.90, 9403.20.0020, and 9403.20.0030. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the investigation is dispositive.

Scope Comments

In accordance with the *Preamble* to the Department's regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*)), in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. The Department did not receive scope comments from any interested party.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On July 31, 2009, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of wire decking from the PRC. *See Wire Decking From China*, Investigation Nos. 701–TA–466 and 731–TA–1162 (Preliminary), 74 FR 38229 (July 31, 2009).

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On June 25, 2009, the Department initiated AD and CVD investigations of wire decking from the PRC. *See Wire Decking From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 31691 (July 2, 2009) and also *Initiation Notice* (for the PRC CVD investigation). The AD and CVD investigations have the same scope with regard to the merchandise covered.

On October 28, 2009, the petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in the companion AD investigation of wire decking from the PRC. Therefore, in accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final determination in the companion AD investigation of wire decking from the PRC. The final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued on or about March 20, 2010.

Application of the Countervailing Duty Law to Imports from the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper From the People's Republic of China: Final Affirmative Countervailing Duty*

[4] The GOC and Eastfound Metal coordinated with regard to the October 1, 2009, supplemental questionnaire. Eastfound Metal submitted a response to the questionnaire on October 19, 2009.

[5] On October 19, 2009, counsel for Eastfound Metal was instructed to re-file the company's supplemental questionnaire response dated October 13, 2009, because the submission contained a document not germane to this investigation. *See* Letter from Melissa G. Skinner, Director, AD/CVD Operations Office 3, to Gregory S. Menegaz of DeKieffer and Horgan, dated October 19, 2009. Mr. Menegaz re-filed Eastfound Metal's supplemental questionnaire response on October 20, 2009.

Determination, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum (CFS Decision Memorandum). In *CFS from the PRC*, the Department found that

> . . . given the substantial differences between the Soviet–style economies and the China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet–style economies does not act as a bar to proceeding with a CVD investigation involving products from China.

See CFS Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations. *See, e.g., Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (CWP Decision Memorandum) at Comment 1.

Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this investigation. *See* CWP Decision Memorandum at Comment 2.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Application of Facts Available: Provision of Zinc for Less Than Adequate Remuneration (LTAR)

The Department is investigating the extent to which firms, acting as government authorities, sold zinc to the mandatory respondents for LTAR. As discussed in further detail below in the ''Provision of Zinc for LTAR'' section, the Department sought information from the mandatory respondents and the GOC concerning the identity of the firms that produced the zinc ultimately purchased by the mandatory respondents during the POI. The Department specifically sought information that would enable it to determine whether the input suppliers acted as producers of the input or as trading companies (or non–producing suppliers) that resold the input that was produced by other firms. In the case of DHMP, information from the company and the GOC identified the name of the supplier(s) that sold the zinc to DHMP during the POI. However, DHMP and the GOC did not identify the firm(s) that actually produced the zinc that was sold to DHMP during the POI.[6] As explained below in the ''Provision of Zinc for LTAR'' program, the Department requires information concerning the producer(s) of the zinc purchased by DHMP in order to determine whether DHMP acquired zinc from a producer that acted as a government authority capable of providing a financial contribution as described under section 771(5)(D)(iv) of the Act. Thus, we find that the necessary information is not on the record.

In prior CVD cases involving the PRC, in instances in which the mandatory respondent and the GOC have failed to identify the firm that produced the input sold to the mandatory respondent during the POI, the Department has resorted to the use of facts available as described under sections 776(a)(1) and (2)(b) of the Act. *See, e.g., Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) (*CWASPP from the PRC*), and accompanying Issues and Decision Memorandum (CWASPP Decision Memorandum) at ''Provision of SSC for LTAR.'' In such instances, the Department has utilized aggregate production data provided by the GOC to estimate the amount of the input that is produced by state–owned enterprises. *Id*. In keeping with this approach, we have resorted to the use of facts available under sections 776(a)(1) and (2) of the Act in order to determine the extent to which the zinc purchased by DHMP during the POI was produced by firms acting as government authorities capable of providing a financial contribution within the meaning of section 771(5)(D)(iv) of the Act.

The GOC provided the amount of zinc produced by state–owned enterprises (SOEs), collectives, private firms, and firms for which the ownership category was unknown. In the final determination of *LWRP from the PRC*, the Department affirmed its decision to treat collectives as government authorities. *See Light–Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*LWRP from the PRC*), and accompanying Issues and Decision Memorandum (LWRP Decision Memorandum) at Comment 5. We have adopted the same approach with regard to collectives in the instant investigation. Using this data, we calculated the share of zinc produced by government authorities to be approximately 67 percent.[7] Therefore, pursuant to sections 776(a)(1) and (2) of the Act, we are assuming that 67 percent of the zinc sold to DHMP during the POI was produced by government authorities capable of providing a financial contribution within the meaning of section 771(5)(D)(iv) of the Act.

Application of Adverse Inferences: Provision of Electricity for LTAR

On July 16, 2009, the Department issued its initial questionnaire to the GOC. In the questionnaire, the Department asked the GOC several questions regarding its alleged provision of electricity to the mandatory respondents for LTAR. *See* Department's Initial Questionnaire at Appendix 7 (July 16, 2009). The GOC failed to respond to those questions. *See* GOC's Initial Questionnaire Response at 27–30 (September 10, 2009). The Department issued a supplemental questionnaire in which it asked the GOC once again to submit the requested information concerning the provision of electricity for LTAR program. *See* Department's Second Supplemental Questionnaire at 2 (September 18, 2009). The GOC, however, again failed to provide the requested information with regard to several of the Department's questions on the provision

[6] Eastfound reported that it did not purchase zinc during the POI.

[7] In deriving this ratio, we did not include in our calculations the quantity of zinc produced by firms that the GOC categorized as unknown.

of electricity. *See* GOC's Second Supplemental Questionnaire Response at 1–2 (October 15, 2009).

Section 776(a)(2)(D) of the Act states that the Department shall use the facts otherwise available in reaching a determination if an interested party provides information that cannot be verified as provided by section 782(i) of the Act. In addition, section 776(a)(2)(A) of the Act states that the Department shall use facts available when a party withholds information that has been requested by the Department. Further, section 776(b) of the Act states that if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.

As summarized above, the GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program. We preliminarily find that, in failing to provide the requested information, the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC and preliminarily determine that the GOC is providing a financial contribution that is specific within the meaning of section 771(5A)(D)(iv) of the Act. *See* ''Provision of Electricity for LTAR'' section below for a discussion of the program benefit.

Application of Adverse Inferences: Non–Cooperative Companies

In this investigation, 74 companies did not provide a response to the Department's Q&V questionnaire issued during the respondent selection process. These non–cooperative Q&V companies are listed below in the ''Suspension of Liquidation'' section. We confirmed that each of these companies received the Q&V questionnaire which was sent via either Federal Express or DHL.[8]

The 74 non–cooperative Q&V companies withheld requested information and significantly impeded this proceeding. Specifically, by not responding to requests for information concerning the quantity and value of their sales, they impeded the Department's ability to select the most appropriate respondents in this investigation. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD rate for the non–cooperative Q&V companies on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department's Q&V questionnaires, these companies did not cooperate to the best of their ability in this investigation. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the non–cooperating Q&V companies will not obtain a more favorable result than had they fully complied with our request for information.

In deciding which facts to use as adverse facts available (AFA), section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. *See, e.g., Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*LWS from the PRC*), and accompanying Issues and Decision Memorandum (LWS Decision Memorandum) at ''Selection of the Adverse Facts Available.''

In previous CVD investigations of products from the PRC, we adapted the practice to use the highest rate calculated for the same or similar program in other PRC CVD investigations. *See id.* and *Certain Tow–Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in the *Certain Tow–Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum (Lawn Groomers Decision Memorandum) at ''Application of Facts Available, Including the Application of Adverse Inferences''). For this preliminary determination, consistent with the Department's recent practice, we are computing a total AFA rate for the non–cooperating companies generally using program–specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, we are applying the highest calculated rate for the identical program in this investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, we are using the highest non–*de minimis* rate calculated for the same or similar program in another PRC CVD investigation. Absent an above–*de minimis* subsidy rate calculated for the same or similar program, we are applying the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non–cooperating companies. *See, e.g., Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*), and accompanying Issues and Decision Memorandum (LWTP Decision Memorandum) at ''Selection of the Adverse Facts Available Rate.''

Further, where the GOC can demonstrate through complete, verifiable, positive evidence that non–cooperative Q&V companies (including all their facilities and cross–owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for the non–cooperative Q&V companies. *See, e.g., Certain Kitchen*

[8] *See* Memorandum to the File regarding ''Delivery of Quantity and Value Questionnaires via Federal Express and DHL'' (July 16, 2009).

Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) (*Shelving from the PRC*), and accompanying Issues and Decision Memorandum (Shelving Decision Memorandum) at ''Use of Facts Otherwise Available and Adverse Facts Available.'' In this investigation, the GOC has not provided any such information. Therefore, we are making the adverse inference that the non–cooperative Q&V companies had facilities and/or cross–owned affiliates that received subsidies under all of the sub–national programs on which the Department initiated.

For the income tax rate reduction or exemption programs, we are applying an adverse inference that the non–cooperative Q&V companies paid no income taxes during the POI. The six programs are: (1) Two Free, Three Half Tax Exemptions for FIEs, (2) Income Tax Exemptions for Export–Oriented FIEs, (3) Local Income Tax Exemption and Reduction Program for Productive FIEs, (4) Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises, (5) Income Tax Benefits for FIEs Based on Geographical Location, and (6) Income Tax Exemption for Investors in Designated Geographical Regions within Liaoning.

The standard income tax rate for corporations in the PRC is 30 percent, plus a 3 percent provincial income tax rate.[9] The highest possible benefit for all income tax reduction or exemption programs combined is 33 percent. Therefore, we are applying a CVD rate of 33 percent on an overall basis for these six income tax programs (*i.e.*, these six income tax programs combined provide a countervailable benefit of 33 percent). This 33 percent AFA rate does not apply to tax credit or tax refund programs. This approach is consistent with the Department's past practice. *See*, *e.g.*, CWP Decision Memorandum at 2, and LWTP Decision Memorandum at ''Selection of the Adverse Facts Available Rate.''

The 33 percent AFA rate does not apply to the following four income tax credit and rebate or accelerated depreciation programs because such programs may not affect the tax rate and, hence, the subsidy conferred, in the current year: (1) Income Tax Credit for Domestically–owned Companies Purchasing Domestically–produced Equipment, (2) Income Tax Exemption for Investment in Domestic Technological Renovation,[10] (3) Preferential Income Tax Policy for Enterprises in the Northeast Region,[11] and (4) Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China.[12] Neither mandatory respondent used these programs, nor have we found greater than *de minimis* benefits for these direct tax programs in other CVD PRC proceedings. Therefore, we preliminarily determine to use the highest non–*de minimis* rate for any indirect tax program from a China CVD investigation. The rate we select is 1.51 percent, calculated for the ''Value–Added Tax and Tariff Exemptions on Imported Equipment'' program in *CFS from the PRC*. *See* CFS Decision Memorandum at 13–14.

We are also investigating VAT and tariff reduction programs. Eastfound used the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries program and VAT Refunds for FIEs Purchasing Domestically–produced Equipment program and, therefore, we are using, as AFA, Eastfound's rates of 0.02 percent and 0.13 percent, respectively. For the other following VAT and tariff reduction programs, for which we do not have respondent program usage, we are applying the 1.51 percent rate calculated in *CFS from the PRC*: (1) VAT Deductions on Fixed Assets and (2) VAT Exemptions for Newly Purchased Equipment in Jinzhou District.

Neither respondent used any of the loan programs on which the Department initiated. Therefore, for the following loan programs, we preliminarily determine to apply the highest non–*de minimis* subsidy rate for any loan program in a prior China CVD investigation: (1) Honorable Enterprise Program,[13] (2) Preferential Loans for Key Projects and Technologies, (3) Preferential Loans as Part of the Northeast Revitalization Program, and (4) Policy Loans for Firms Located in Industrial Zones in the City of Dalian in Liaoning Province. The highest non–*de minimis* subsidy rate is 8.31 percent calculated for the ''Government Policy Lending Program,'' from *LWTP from the PRC*. *See Lightweight Thermal Paper From the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 FR 70958 (November 24, 2008) (*Amended LWTP from the PRC*).

We also investigated on a number of grant programs. Neither respondent used the following grant programs: (1) Five Points, One Line Program, (2) Export Interest Subsidies, (3) State Key Technology Fund, (4) Subsidies for Development of Famous Export Brands and China Top Brands, (5) Sub–Central Government Programs to Promote Famous Export Brands and China World Top Brands, and (6) Exemption of Fees for Firms Located in Designated Geographical Areas in Dalian. In addition, the Department has not calculated an above *de minimis* rates for any of these programs in prior investigations, and, moreover, all previously calculated rates for grant programs from prior China CVD investigations have been *de minimis*. Therefore, for each of these grant programs, we preliminarily determine to use the highest calculated subsidy rate for any program otherwise listed, which could have been used by the non–cooperative Q&V companies. We preliminarily determine that this rate is 44.91 percent for the ''Provision of HRS for LTAR'' program from *CWP from the PRC*. *See Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 FR 42545 (July 22, 2008) (*Amended CWP from the PRC*).

Finally, there are several provision of a good or service for LTAR programs, which we are investigating. For the Provision of Wire Rod for LTAR, we are using the rate of 1.21 percent calculated for Eastfound (*see* program section below). For the Provision of HRS for LTAR, we are using the rate of 0.26 percent calculated for Eastfound (*see* program section below). For the Provision of Zinc for LTAR, though we have respondent use of this program, DHMP's rate is 0.00 percent. Therefore, we are using, as the AFA rate, the 44.91 percent calculated for the ''Provision of HRS for LTAR'' program from *Amended CWP from the PRC*.

[9] *See* GOC's supplemental questionnaire response at 9 (October 15, 2009).

[10] Program provides a tax credit to enterprises for a certain portion of investment in any domestically-produced equipment that relates to technology updates. *See* Initiation Checklist at 15.

[11] Program reduces the depreciation life of fixed assets by up to 40 percent for tax purposes and shortens the period of amortization of intangible assets by up to 40 percent for tax purposes. *See* Initiation Checklist at 15.

[12] Petitioner alleged that this program forgives tax liabilities owed by companies in the northeast region of China. *See* Initiation Checklist at 16.

[13] In its September 29, 2009, supplemental questionnaire response, the GOC reported that the Honorable Enterprise Program was terminated and provided termination legislation (*see* page 1 and Exhibit 1). The GOC also reported that it has not enacted a successor program. We require more information regarding the GOC's claim that the program has been terminated and will continue to examine the GOC's claim of program termination.

Regarding the Provision of Electricity for LTAR,[14] for reasons discussed in the program section below, we preliminarily determine to use, as AFA, the rate of 0.07 percent, which was calculated for the program ''Provision of Electricity for LTAR in Zhanjiang Zone'' in *LWTP from the PRC*.

For the Provision of Land for LTAR for Firms Located in Designated Geographical Areas in Dalian, we are using the rate of 1.46 percent calculated for DHMP (*see* program section below). Regarding the Provision of Water for LTAR for Firms Located in Designated Geographical Areas in Dalian, which neither respondent used, the Department has not calculated a rate for this type of program in a prior CVD PRC investigation. Therefore, we have preliminarily determined to use the highest non–*de minimis* rate calculated for a provision of a good or service at LTAR program for which the non–cooperative Q&V companies could have benefitted. We preliminarily determine that this rate is 44.91 percent for the ''Provision of HRS for LTAR'' program from *Amended CWP from the PRC*.

For further explanation of the derivation of the AFA rates, *see* Memorandum to the File, regarding ''Preliminary Determination of Adverse Facts Available Rate'' (November 2, 2009) (AFA Memorandum). Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See*, *e.g.*, SAA, at 870, 1994 U.S.C.C.A.N. at 4199. The Department considers information to be corroborated if it has probative value. *Id*. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. Id. at 869.

With regard to the reliability aspect of corroboration, we note that these rates were calculated in recent final CVD determinations. Further, the calculated rates were based upon verified information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company–specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it. *See Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

In the absence of record evidence concerning these programs due to the decision of the non–cooperative Q&V companies to not participate in the investigation, we have reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program–type match, we find that, because these are the same or similar programs, they are relevant to the programs of this case. For the programs for which there is no program–type match, we have selected the highest calculated subsidy rate for any PRC program from which the non–cooperative Q&V companies could receive a benefit to use as AFA. The relevance of these rates is that it is an actual calculated CVD rate for a PRC program from which the non–cooperative Q&V companies could actually receive a benefit. Further, these rates were calculated for periods close to the POI in the instant case. Moreover, the failure of these companies to respond to requests for information by the Department has ''resulted in an egregious lack of evidence on the record to suggest an alternative rate.'' *See Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. supp. 2d 1339, 1348 (CIT 2005). Due to the lack of participation by the non–cooperative Q&V companies and the resulting lack of record information concerning their use of the programs under investigation, the Department has corroborated the rates it selected to use as AFA to the extent practicable.

On this basis, we preliminarily determine the AFA countervailable subsidy rate for the non–cooperative Q&V companies to be 437.73 percent *ad valorem*. *See* AFA Memorandum.

Application of All Others Rate to Companies Not Selected as Mandatory Respondents

In addition to DHMP and Eastfound, we received responses to the Q&V questionnaire from the following eight companies: Brynick Enterprises Limited;[15] C–F Industries LLC; Dalian Xingbo Metal Products Co., Ltd.; Dandong Riqian Logistics Equipment Co., Ltd.; Globsea Co., Ltd.; Nanjing Topsun Racking Manufacturing Co., Ltd.; Ningbo Xinguang Rack Co., Ltd.; and Tianjin Jiali Machine Co., Ltd. *See* Memorandum to the File regarding ''Q&V Cooperative Companies'' (November 2, 2009). Though these eight companies were not chosen as mandatory respondents, they did cooperate fully with the Department's request for quantity and value information. We, therefore, are applying the all others rate to them.[16]

Subsidies Valuation Information

Allocation Period

Under 19 CFR 351.524(b), non–recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years. No interested party has claimed that the AUL of 12 years is unreasonable.

Further, for non–recurring subsidies, we have applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to

[14] Our preliminary findings regarding the federal provision of electricity for LTAR encompasses the program ''Provision of Electricity for LTAR for Firms Located in Designated Geographical Areas in Dalian,'' which is listed in the *Initiation Notice* and accompanying Initiation Checklist.

[15] Also known as, Ningbo Brynick Enterprises Limited.

[16] We are also applying the all others rate to Yangzhou Hynet Imp and Exp Corp. because the Department inadvertently failed to send to the company a Q&V questionnaire. *See* Memorandum to the File regarding ''Yangzhou Hynet Imp and Exp Corp.'' (November 2, 2009).

the year of receipt rather than allocated over the AUL period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs the Department to attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross–ownership exists between the companies, and (2) the cross–owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross–owned company.

According to 19 CFR 351.525(b)(6)(vi), cross–ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600–604 (CIT 2001).

Eastfound

Eastfound Metal and Eastfound Material are affiliated companies that produce and export the subject merchandise. These companies are cross–owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of high levels of common ownership. Therefore, pursuant to 19 CFR 351.525(b)(6)(ii), we are attributing the subsidies received by Eastfound Metal and Eastfound Material to the combined sales of the companies, excluding the sales between them.

Eastfound Metal and Eastfound Material reported other affiliated parties; however, both companies reported that these other affiliates do not produce the subject merchandise and do not provide inputs. Therefore, because these other affiliates do not produce subject merchandise or otherwise fall within the situations outlined in 19 CFR 351.525(b)(6)(iii)-(v), we are not including these companies in our subsidy calculations.

DHMP

In its questionnaire response, DHMP indicated that is the sole producer of subject merchandise. It also indicated that it is owned by a parent company. We sent a CVD questionnaire to the parent company of DHMP. The parent company supplied its response on September 9, 2009. Based on the information in the response, we preliminarily determine that the parent company did not produce subject merchandise or supply DHMP with an input that is primarily dedicated to the production of subject merchandise during the POI. Furthermore, based on the questionnaire response of the parent company, we preliminarily determine that it had no sales revenue during the POI and did not use any of the alleged subsidy programs. Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are attributing subsidies found to have been received by DHMP solely to the sales of DHMP.

Benchmarks and Discount Rates

Although the Department is not calculating subsidy rates for any loans in this investigation, the benchmark interest rate is used to compute the discount rate that we are using to allocate benefits over time. Therefore, we discuss the derivation of the benchmark rates below.

Benchmark for Short–Term RMB Denominated Loans: Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. *See* 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national interest rate for comparable commercial loans.'' *See* 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market–based rate. However, for the reasons explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. *See* CFS Decision Memorandum at Comment 10. Because of this, any loans received by respondents from private Chinese or foreign–owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market–based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government–provided timber in Canada. *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum (Softwood Lumber Decision Memorandum) at ''Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.''

We are calculating the external benchmark using the regression–based methodology first developed in *CFS from the PRC* and more recently updated in *LWTP from the PRC*. *See* CFS Decision Memorandum at Comment 10; *see also* LWTP Decision Memorandum at ''Benchmarks and Discount Rates.'' This benchmark interest rate is based on the inflation–adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to the state–imposed distortions in the banking sector discussed above.

Following the methodology developed in *CFS from the PRC*, we first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as: low income; lower–middle income; upper–middle income; and high income. The PRC falls in the lower–middle income category, a group that includes 55 countries as of July 2007. As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported

in the IFS for the countries identified as ''low middle income'' by the World Bank. First, we did not include those economies that the Department considered to be non–market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign–currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar–denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation–adjusted short–term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.

Benchmark for Long–Term RMB Denominated Loans: The lending rates reported in the IFS represent short- and medium–term lending, and there are no sufficient publicly available long–term interest rate data upon which to base a robust long–term benchmark. To address this problem, the Department has developed an adjustment to the short- and medium–term rates to convert them to long–term rates using Bloomberg U.S. corporate BB–rated bond rates. *See* LWRP Decision Memorandum at ''Discount Rates.'' In *Citric Acid from the PRC*, this methodology was revised by switching from a long–term mark–up based on the ratio of the rates of BB–rated bonds to applying a spread which is calculated as the difference between the two–year BB bond rate and the n–year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (Citric Acid Decision Memorandum) at Comment 14.

Discount Rates: Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long–term interest rate calculated according to the methodology described above for the year in which the government provided the subsidy.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Provision of Wire Rod for LTAR

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold wire rod to the mandatory respondents for LTAR. DHMP and Eastfound reported obtaining wire rod during the POI from trading companies as well as directly from wire rod producers.

In *Tires from the PRC*, the Department determined that majority government ownership of an input producer is sufficient to qualify it as an ''authority.'' *See Certain New Pneumatic Off–the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*Tires from the PRC*), and accompanying Issues and Decision Memorandum (Tires Decision Memorandum) at ''Government Provision of Rubber for Less than Adequate Remuneration.'' Based on the record in the instant investigation, we preliminarily determine that wire rod producers, which supplied respondents, and that are majority–government owned are ''authorities.'' *See* Memorandum to the File regarding ''Preliminary Calculations for Eastfound'' (November 2, 2009) (Eastfound Preliminary Calculations). As a result, we determine that wire rod supplied by companies deemed to be government authorities constitute(s) a financial contribution to Eastfound in the form of a governmental provision of a good and that the respondents received a benefit to the extent that the price they paid for wire rod produced by these suppliers was for LTAR. *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.[17]

In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non–producing supplier, a subsidy is conferred if the producer of the input is an ''authority'' within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was sold for LTAR. *See* CWP Decision Memorandum at ''Hot–Rolled Steel for Less Than Adequate Remuneration;'' Shelving Decision Memorandum at ''Provision of Wire Rod for Less than Adequate Remuneration;'' and CWASPP Decision Memorandum at ''Provision of SSC for LTAR.'' Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC together identify the producers from whom the trading companies acquired the wire rod that was subsequently sold to respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities.

In response to these requests, DHMP and Eastfound were able to identify the firms that produced the wire rod that was ultimately sold to them. We have used the information concerning the ownership status of the wire rod suppliers to determine whether DHMP and Eastfound purchased wire rod that was produced by government authorities. In the case of DHMP, we preliminarily determine that none of the wire rod it purchased was produced by firms acting as government authorities. Therefore, we have not conducted a subsidy analysis for DHMP's purchases of wire rod during the POI. Regarding Eastfound, we preliminarily determine that it purchased a certain quantity of wire rod that was produced by government authorities during the POI. Therefore, we preliminarily determine, with regard to wire rod produced by these firms, that Eastfound received a financial contribution within the meaning of section 771(5)(D)(iv) of the Act.

Having addressed the issue of financial contribution, we must next analyze whether the sale of wire rod to Eastfound by suppliers designated as government authorities conferred a benefit within the meaning of section 771(5)(iv) of the Act. The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market–determined benchmarks for measuring the adequacy of remuneration for government–provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected

[17] Regarding DHMP, we preliminarily determine that none of the wire rod it acquired during the POI was produced by government authorities.

to reflect most closely the prevailing market conditions of the purchaser under investigation. *See* Softwood Lumber Decision Memorandum at ''Market–Based Benchmark.''

Beginning with tier–one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *CVD Preamble*:

> Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See Preamble to Countervailing Duty Regulations, 63 FR 65377, (November 25, 1998) (*CVD Preamble*). The *CVD Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

In the instant investigation, the GOC reported the total wire rod production by state–owned entities during the POI. The number of these state–owned entities (SOEs and COEs) accounted for approximately the same percentage of the wire rod production in the PRC as was recently found in *Shelving and Racks from the PRC*, in which the Department determined that the GOC had direct ownership or control of wire rod production. *See* Shelving and Racks Decision Memorandum, at Comment 4. Because the GOC has not provided any information that would lead the Department to reconsider the determination in *Shelving and Racks from the PRC*, we find that the substantial market share held by SOEs shows that the government plays a predominant role in the this market. *See* Shelving and Racks Decision Memorandum at 15. The government's predominant position is further demonstrated by the low level of imports, which accounted for only one percent of the volume of wire rod available in the Chinese market during the POI. See GOC's September 10, 2009, questionnaire response at 11. Because the share of imports of wire rod into the PRC is small relative to Chinese domestic production of wire rod, it would be inappropriate to use import values to calculate a benchmark. This is consistent with the Department's approach discussed in *LWRP Decision Memorandum*, at Comment 7.

In addition to the government's predominant role in the market, we found in *Shelving and Racks from the PRC* that the 10 percent export tariff and export licensing requirement instituted by the GOC contributed to the distortion of the domestic market in the PRC for wire rod. Such export restraints can discourage exports and increase the supply of wire rod in the domestic market, with the result that domestic prices are lower than they would otherwise be. See Shelving and Racks Decision Memorandum at 15. Consequently, we determine that there are no appropriate tier one benchmark prices available for wire rod.

We examined whether the record contained data that could be used as a tier–two wire rod benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for wire rod (industrial quality, low carbon), as sourced from the American Metals Market (AMA). *See* Petitioners' Benchmark Comments at Exhibit 1. The benchmark prices are reported on a monthly basis in U.S. dollars per metric ton (MT). No other interested party submitted tier–two wire rod prices on the record of this investigation.

Therefore, for purposes of the preliminary determination, we find that the data from AMA should be used to derive a tier–two, world market price for wire rod that would be available to purchasers of wire rod in the PRC. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. *See*, *e.g.*, CWP Decision Memorandum at ''Hot–Rolled Steel for Less Than Adequate Remuneration'' and LWRP Decision Memorandum at ''Hot–Rolled Steel for Less Than Adequate Remuneration.'' Further, we find that, for purposes of the preliminary determination, there is no basis to conclude that prices from the AMA are any less reliable or representative than data from other trade industry publications used by the Department in prior CVD proceedings involving the PRC.

To determine whether wire rod suppliers, acting as government authorities, sold wire rod to respondents for LTAR, we compared the prices that Eastfound paid to the suppliers to our wire rod benchmark price. We conducted our comparison on a monthly basis. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by Eastfound for its purchases of wire rod.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, at this time we lack information concerning delivery charges and, therefore, have not adjusted the benchmark in this regard, but will continue to seek the relevant information. However, we have added import duties, as reported by the GOC, and the VAT applicable to imports of wire rod into the PRC. With respect to the three percent insurance charge on imports noted by the petitioner, consistent with *Shelving from the PRC*, while the Department will consider in future determinations the propriety of including insurance as a delivery charge, the existing record of this investigation does not support such an adjustment. See Shelving from the PRC Decision Memorandum at Comment 9.

Comparing the benchmark unit prices to the unit prices paid by Eastfound for wire rod, we preliminarily determine that wire rod was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). We calculated the total benefit by multiplying the unit benefit by the quantity of wire rod purchased.

Finally, with respect to specificity, the third subsidy element specified under the Act, the GOC has provided information on end uses for wire rod. *See* GOC's Initial Questionnaire Response at 14 (September 10, 2009). The GOC stated that the consumption of wire rod occurs across a broad range of industries. *Id.* While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. *See* section 771(5A)(D)(iii)(I) of the Act; *see also* LWRP Decision Memorandum at Comment 7, and Shelving Decision Memorandum at ''Provision of Wire Rod from Less Than Adequate Remuneration.''

We preliminarily find that the GOC's provision of wire rod for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to calculate the net subsidy rate, we divided the benefit by a denominator comprised of total sales. On this basis, we calculated a total net subsidy rate of 1.21 percent *ad valorem* for Eastfound.

B. Provision of Hot–Rolled Steel for LTAR

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold HRS to the mandatory respondents for LTAR. DHMP and Eastfound reported purchasing HRS during the POI from trading companies as well as directly from HRS producers.

As explained above, in *Tires from the PRC*, the Department determined that majority government ownership of an input producer is sufficient to qualify the producer as an ''authority.'' *See* Tires Decision Memorandum at ''Government Provision of Rubber for Less than Adequate Remuneration.'' Based on the record of this investigation, we preliminarily determine that HRS producers that supply respondents and that are majority–government owned are ''authorities.'' *See* Eastfound Preliminary Calculations. As a result, we preliminarily determine that HRS supplied by companies deemed to be government authorities constitute a financial contribution to respondents in the form of a governmental provision of a good and that the respondents received a subsidy to the extent that the price they paid for HRS produced by these suppliers was sold for LTAR. *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non–producing supplier, a subsidy is conferred if the producer of the input is an ''authority'' within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was sold for LTAR. *See* CWP Decision Memorandum at ''Hot–Rolled Steel for Less Than Adequate Remuneration,'' Shelving Decision Memorandum at ''Provision of HRS for Less than Adequate Remuneration,'' and CWASPP Decision Memorandum at ''Provision of SSC for LTAR.'' Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC together identify the producers from whom the trading companies acquired the HRS that was subsequently sold to respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities.

In response to these requests, DHMP and Eastfound were able to identify the firms that produced the HRS that was ultimately sold to them. We have used the information concerning the ownership status of the HRS suppliers to determine whether DHMP and Eastfound purchased HRS that was produced by government authorities. In the case of DHMP, we preliminarily determine that none of the HRS it purchased was produced by firms acting as government authorities. Therefore, we have not conducted a subsidy analysis for DHMP's purchases of HRS during the POI. Regarding Eastfound, we preliminarily determine that it purchased a certain quantity of HRS that was produced by government authorities during the POI. Therefore, we preliminarily determine, with regard to HRS produced by these firms, that Eastfound received a financial contribution within the meaning of section 771(5)(D)(iv) of the Act.

Having addressed the issue of financial contribution, we must next analyze whether the sale of HRS to the mandatory respondents by suppliers designated as government authorities conferred a benefit within the meaning of section 771(5)(iv) of the Act. The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market–determined benchmarks for measuring the adequacy of remuneration for government–provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See* Softwood Lumber Decision Memorandum at ''Market–Based Benchmark.''

Beginning with tier–one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *CVD Preamble*:

> Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See 63 FR at 65377. The *CVD Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

As instructed, the GOC provided the percentage of HRS production accounted for by SOEs during the POI. The GOC further reported the portion of HRS produced by ''collectives.'' In the final determination of *LWRP from the PRC*, the Department affirmed its decision to treat collectives as government authorities. *See* LWRP Decision Memorandum at Comment 5. Based on this aggregate data, we preliminarily determine that government authorities accounted for a majority of the HRS produced during the POI. Based on these data, we preliminarily determine that domestic prices for HRS cannot serve as a viable tier–one benchmark as described under 19 CFR 351.511(a)(2)(i). Consequently, as there are no other available tier–one benchmark prices, we have turned to tier–two, *i.e.*, world market prices available to purchasers in the PRC.

We examined whether the record contained data that could be used as a tier–two HRS benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for HRS, as sourced from the Steel Benchmarker Report. *See* Petitioners' Benchmark Comments at Exhibit 2. The benchmark prices are reported on a monthly basis in U.S. dollars per metric ton (MT). No other interested party submitted tier–two HRS prices on the record of this investigation.

Therefore, for purposes of the preliminary determination, we find that the data from the Steel Benchmarker Report should be used to derive a tier–two, world market price for HRS that would be available to purchasers of HRS in the PRC. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. *See*, *e.g.*, CWP Decision Memorandum at ''Hot–Rolled Steel for Less Than Adequate Remuneration,'' and LWRP Decision Memorandum at ''Hot–Rolled Steel for Less Than Adequate Remuneration.'' Further, we find that, for purposes of the preliminary determination, there is no basis to conclude that prices from the Steel Benchmarker Report are any less reliable or representative than data from other trade industry publications used by the Department in prior CVD proceedings involving the PRC.

To determine whether HRS suppliers, acting as government authorities, sold HRS to Eastfound for LTAR, we

compared the prices the respondents paid to the suppliers to our HRS benchmark price. We conducted our comparison on a monthly basis. The Steel Benchmarker Report provides multiple prices for each month of the POI. Therefore, to arrive at a single monthly benchmark HRS price, we simple averaged the prices for each month. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by Eastfound for its purchases of HRS.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, at this time we lack information concerning delivery charges and, therefore, have not adjusted the benchmark in this regard, but will continue to seek the relevant information. With respect to the three percent insurance charge on imports noted by the petitioner, consistent with *Shelving from the PRC*, while the Department will consider in future determinations the propriety of including insurance as a delivery charge, the existing record of this investigation does not support such an adjustment. *See* Shelving from the PRC Decision Memorandum at Comment 9.

Comparing the benchmark unit prices to the unit prices paid by Eastfound for HRS, we preliminarily determine that HRS was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). We calculated the total benefit by multiplying the unit benefit by the quantity of HRS purchased.

Finally, with respect to specificity, in prior cases involving the provision of HRS for LTAR, the Department has found that the program is specific under section 771(5A)(D)(iii)(I) of the Act because the industries that utilize HRS are limited. *See* LWRP Decision Memorandum at Comment 7, and Shelving Decision Memorandum at ''Provision of HRS from Less Than Adequate Remuneration.'' We preliminarily determine that there is no information on the record at this time to warrant reconsideration of the Department's prior findings in this regard.

We preliminarily find that the GOC's provision of HRS for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to calculate the net subsidy rate, we divided the benefit by a denominator comprised of total sales. On this basis, we calculated a total net subsidy rate of 0.26 percent *ad valorem* for Eastfound.

C. Provision of Land for LTAR

As explained in the Initiation Checklist,[18] the Department is investigating whether the City of Dalian sells land for LTAR to firms located in the municipality's Huayuankou Industrial Zone. In the initial questionnaire, the Department asked the respondents to report their purchase of land located in Dalian's designated industrial zones.

Though Eastfound Metal and Eastfound Material reported that they are not located at any development zone or special area in Dalian,[19] each company responded to the Department's questions on the ''Provision of Land for LTAR for Firms Located in Designated Geographical Areas in the City of Dalian in Liaoning Province.'' Therefore, for purposes of this preliminary determination, we find that the respondents are located in a designated zone.

Eastfound Metal reported that it obtained its land–use rights in May 2000,[20] which is prior to the date (*i.e.*, December 11, 2001) from which the Department will identify and measure subsidies in the PRC for purposes of this investigation. Eastfound Material reported that it acquired two parcels of land (Land A and Land B) located in Jinzhou District within the City of Dalian from local government authorities. There is conflicting information on the record as to whether Eastfound Material had an additional land transaction. We will seek additional information regarding a possible third land purchase.

Eastfound Material's purchase of Land A occurred in 2008 and the purchase of Land B in 2006. Regarding Land B, Eastfound Material reported that it purchased this land from Beihai Village in Jinzhou District, and paid a price determined through a mutual agreement with Beihai Village.[21]

Regarding Land A, Eastfound Material stated that it purchased Land A from Dalian Municipal Bureau of Land Resource and Housing Management (Dalian Municipal Bureau). Unlike Land B, however, Eastfound Material reported that it purchased Land A through a ''public listing'' process which has elements of an auction where the land authorities issue a ''notice of public listing'' and all parties who are interested in the land use right of this land are free to participate in the public listing competition.[22] We note that the notice for public listing includes 10 serial numbers of land (Land A included) for sale, and all of the land are designated for construction purposes and are designated to be used for ''storage'' or used by ''industry.''[23] With respect to Land A, the ''Public Listing Notice'' further designates that ''the nature of the land use'' for Land A is ''metal products industry.''[24] Moreover, information supplied by the Eastfound Material indicates that while there were multiple companies participating in the public listing process in the notice which includes 10 parcels of land, Eastfound Material was the only company participating in the public listing for Land A. As a result, Eastfound Material was the sole bidder of Land A.

The Department has previously determined that the provision of land–use rights constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act. *See* LWS Decision Memorandum at Comment 8; *see also* Citric Acid Decision Memorandum at ''Provision of Land in the AEDZ for LTAR.''

The Department also found that when the land is in an industrial park located within the seller's (*e.g.*, county's or municipality's) jurisdiction, the provision of the land–use rights is regionally specific under section 771(5A)(D)(iv) of the Act. *See*, *e.g.*, LWS Decision Memorandum at Comment 9. In the instant investigation, both Land A and Land B are designated areas within the area under the jurisdiction of the City of Dalian as described under section 771(5A)(D)(iv) of the Act. Further, in the case of Eastfound Material's purchase of Land A, as noted above, the GOC limited firms that could respond to the public listing notice to those in the metal products industry. Thus, with regard to Land A, we preliminarily determine this program also meets the specificity criteria

[18] *See* Initiation Checklist at 13.

[19] *See* Eastfound Metal's supplemental questionnaire response at1 (October 20, 2009) and Eastfound Material's supplemental questionnaire response at 1 (October 15, 2009).

[20] *See* Eastfound Metal's initial questionnaire response at III-17 (September 9, 2009).

[21] *See* Eastfound Material's supplemental response at 22-23 (October 15, 2009 Response).

[22] *Id.* at page 17 and Exhibits 8 and 9.

[23] *See* ''Listing Transfer Announcement on the Use Right of the State-owned Land for Construction Purposes of Dalian Municipal Land and Resources Bureau and Housing Bureau Jinzhou Land and Resources Branch'' No.4 Da Jin Guo Tu Gao Zi (2008) in Exhibit 8.

[24] *See* Eastfound Material's supplemental response at Exhibit 9 (October 15, 2009) for the ''Notice of Competitive Buying Of Land-Use Right Under Public Listing (Public Listing Notice).''

described under 771(5A)(D)(i) of the Act. Therefore, consistent with *LWS from the PRC*, we preliminarily determine that Eastfound Material's purchase of granted land–use rights located within the Jinzhou District in 2006 and 2008 gives rise to countervailable subsidies to the extent that the purchases conferred a benefit.

To determine whether the Eastfound Material received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we looked to whether there are market–determined prices (referred to as tier–one prices in the LTAR regulation) within the country. *See* 19 CFR 351.511(a)(2)(i). In *LWS from the PRC*, the Department determined that ''Chinese land prices are distorted by the significant government role in the market'' and, hence, tier–one benchmarks do not exist. *See* LWS Decision Memorandum at Comment 10. The Department also found that tier–two benchmarks (world market prices that would be available to purchasers in China) are not appropriate. *Id.* at ''Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration;'' *see also* 19 CFR 351.511(a)(2)(ii). Therefore, the Department determined the adequacy of remuneration by reference to tier–three and found that the sale of land–use rights in China was not consistent with market principles because of the overwhelming presence of the government in the land–use rights market and the widespread and documented deviation from the authorized methods of pricing and allocating land. *See* LWS Decision Memorandum at Comment 10; *see also* 19 CFR 351.511(a)(2)(iii). We preliminarily determine that there is insufficient new information on the record of this investigation to warrant a change from the findings in *LWS from the PRC*.

With respect to Eastfound Material's claim that it purchased Land A through a public listing process that contains auction elements, we resort to the Department's regulations and past practice. Section 351.511(a)(2)(i) of the regulations states that the Department can use sales from a government–run auction in certain circumstances to determine whether a government–provided good or service is provided for LTAR, but only if the government sells a significant portion of the good or service through competitive bid procedures that are open to everyone. These circumstances are not present here. The Public Listing Notice clearly states that Land A can only be used for ''metal products industry.''[25] Therefore, the public listing process is only open to metal products industry. Thus, the overwhelming majority of the purchasers of this government good or service are explicitly excluded from this auction. As a result, Eastfound Material was the only bidder for Land A. Therefore, the bidding price set by the Land Authority in Jinzhou District cannot be used as benchmark prices under section 351.511(a)(2)(i) of the regulations. *See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada (Lumber from Canada)*, 66 FR 43186 (August 17, 2001),[26] (unchanged in the final determination, *see Softwood Lumber from Canada*).

For these reasons, we are not able to use Chinese or world market prices as a benchmark. Therefore, we are preliminarily comparing the price that the Eastfound Material paid for its granted land–use rights with comparable market–based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of, China. Specifically, we are preliminarily comparing the prices Eastfound Material paid to Beihai Village in 2006, and to Dalian Municipal Bureau in 2008, to the respective Thailand prices in 2006 and 2008 for Thailand's certain industrial land in industrial estates, parks, and zones, consistent with *LWS from the PRC*. *See* LWS Decision Memorandum at ''Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration.''

To calculate the benefit, we computed the amounts that Eastfound Material would have paid for both of its granted land–use rights and subtracted the amounts Eastfound Material actually paid for both of its purchases, Land B in 2006 and Land A in 2008. Our comparison indicates that the prices Eastfound Material paid to the government authority in 2006 for Land B, and the price it paid for Land A in 2008 were less than our land benchmark prices for each respective year and, thus, Eastfound Material received a benefit under section 771(5)(E)(iv) of the Act. Next, in accordance with 19 CFR 351.524(b)(2), we examined whether the subsidy amount exceeded 0.5 percent of Eastfound's total consolidated sales in the years of purchase. Our analysis indicates that the subsidy amount exceeded the 0.5 percent threshold for both land purchases. Therefore, we used the discount rate described under the ''Benchmarks and Discount Rates'' section of this preliminary determination to allocate the benefit over the life of the land–use rights contracts, which is 50 years.

On this basis, we preliminarily determine the total net subsidy rate to be 0.56 percent for Eastfound.

DHMP reported that it is not located in the industrial zones designated by Dalian Municipality and did not benefit from this subsidy program. According to DHMP, it acquired the land rights in 2005 from Dalian Shagangzi village and does not own the land use rights, but rents the land. *See* DHMP's September 9, 2009, submission at 18–20.

Petitioners contested DHMP's statement on the location of its facility. In a submission to the Department petitioners stated that based on the company's website information that it is located within one of the designated preferential areas in Dalian that was alleged in the countervailing duty petition. *See* petitioners' October 22, 2009, submission at 2 and Exhibit 1. Furthermore, it advocated that because DHMP failed to act to the best of its ability to the Department's questionnaires, and because other publicly available information indicates that DHMP's facilities are located in a designated preferential area of Dalian, the Department should countervail the parcel of land, pursuant to sections 776(a)(2)(D) and 776(b) of the Act.

In an October 26, 2009, submission to the Department, DHMP argued that petitioners' submission did not contain a factual certification in addition to misstating the facts of the issue. *See* DHMP's October 26, 2009, submission.

[25] *See* Eastfound Material's supplemental questionnaire response at Exhibit 9, pages 1-2 (October 15, 2009).

[26] In *Softwood Lumber from Canada*, British Columbia provided stumpage prices set by government auction. The Department determined that the auction is only open to small businesses that are registered as small business forest enterprises. Thus, the overwhelming majority of the purchasers of this government good or service are explicitly excluded from this auction. Therefore, the auction prices submitted by British Columbia cannot be used as benchmark prices under section 351.511(a)(2)(i) of the CVD Regulations. Furthermore, the Department found that the provincial government provider constitutes a majority or substantial portion of the market, thus, there is a significant distortion in the private transaction prices for the good or service with that country's market. Thus, the Department determined that it cannot use the private transaction prices provided by the provincial governments. The Department determined that stumpage prices from the United States qualify as commercially available world market prices because it is reasonable to conclude that U.S. stumpage would be available to softwood lumber producers in Canada at the same prices available to U.S. lumber producers.

However, DHMP's response did not refute the central theme of petitioners' October 22, 2009, submission, that it is located in one of the designated preferential areas that was not reported in its questionnaire response. Because petitioners were able to document their assertion from DHMP's home page as opposed to DHMP's narrative description, the Department is preliminarily determining that DHMP's production facility is located within one of the designated preferential areas in Dalian that was alleged in the countervailing duty petition. *See* January 5, 2009, Countervailing Duty Petition, at Exhibit CVD–12.

To calculate the benefit, we computed the amounts that DHMP would have paid for its granted land–use rights and subtracted the amounts DHMP actually paid for its purchase in 2005. Our comparison indicates that the prices DHMP paid to the government authority in 2005 were less than our land benchmark prices for the year and, thus, that DHMP received a benefit under section 771(5)(E)(iv) of the Act. Next, in accordance with 19 CFR 351.524(b)(2), we examined whether the subsidy amount exceeded 0.5 percent of DHMP total consolidated sales in the year of purchase. Our analysis indicates that the subsidy amount exceeded the 0.5 percent threshold for the land purchase. Therefore, we used the discount rate described under the ''Benchmarks and Discount Rates'' section of this preliminary determination to allocate the benefit over the life of the land–use rights contract, which is 50 years.

On this basis, we preliminarily determine the total net subsidy rate to be 1.46 percent for the DHMP.

D. Provision of Electricity for LTAR [27]

For the reasons explained, supra, at ''Adverse Facts Available,'' we are basing our determination regarding the government's provision of electricity programs on AFA. Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. In a CVD case, the Department requires information from both the government of the country whose merchandise is under the order and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. For example in *CTL Plate from Korea*, the Department, relying on adverse inferences, determined that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively. *See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut–to-Length Carbon–Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006) (*Preliminary Results of CTL Plate from Korea*) (unchanged in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut–to-Length Carbon–Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006) (*CTL Plate from Korea*). Similarly, in this instance, because the GOC failed to provide certain information concerning the Provision of Electricity for Less than Adequate Remuneration program, the Department, as AFA, determines that the program confers a financial contribution and is specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively.

Where possible, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. For example, in prior investigations including *LWTP from the PRC* and *Racks from the PRC*, the Department determined the existence and amount of the benefit attributable to the provision of electricity for LTAR by comparing the rates paid by the mandatory respondents for electricity to the higher, benchmark electricity rates. In this investigation, however, while respondents provided some information with respect to their electricity usage and payments, we do not have on the record information that could be meaningfully compared to the appropriate benchmarks. Therefore, we have determined that, for the purposes of this preliminary determination, the rate found for the provision of electricity for LTAR in the *LWTP from the PRC* of 0.07 percent *ad valorem* is appropriate. We find that this rate is both reliable and relevant as it was calculated in prior final CVD determination for a program of the same type.

On this basis, we calculated a net subsidy rate of 0.07 percent *ad valorem* for Eastfound Metal and Eastfound Material and a net subsidy rate of 0.07 percent *ad valorem* for DHMP.

E. Two Free, Three Half Program

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC. According to Article 8 of the FIE Tax Law, FIEs which are ''productive'' and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed ''productive'' if they qualify under Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises.

DHMP and Eastfound Material are ''productive'' FIEs and received benefits under this program during the POI. Eastfound Metal did not use this program during the POI.

We preliminarily determine that the exemption or reduction in the income tax paid by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. Our approach in this regard is consistent with the Department's practice. *See CFS from the PRC* and *Citric Acid from the PRC*.

To calculate the benefit, we treated the income tax savings enjoyed by DHMP and Eastfound Material as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POI by each company's total sales during that period.[28] To compute the amount of the tax savings, we compared the income tax rate that each respondent would have paid in absence of the program (for Eastfound Material, 24 percent, as described under ''Income Tax Benefits for FIEs Based on Geographical Location''), with the income rate that each respondent

[27] Our preliminary findings regarding the federal provision of electricity for LTAR encompasses the program ''Provision of Electricity for LTAR for Firms Located in Designated Geographical Areas in Dalian,'' which is listed in the *Initiation Notice* and accompanying Initiation Checklist.

[28] For Eastfound Material, we used as the denominator the combined total sales for Eastfound Material and Eastfound Metal.

actually paid (for Eastfound Material, 0 percent). On this basis, we preliminarily determine a countervailable subsidy of 0.63 percent *ad valorem* for Eastfound Material, and a countervailable subsidy of 0.49 percent *ad valorem* for DHMP.

Further, the respondents reported that the GOC terminated the Two Free, Three Half Tax Exemption for FIEs on January 1, 2008. We will continue to examine their claims that this program has been terminated.

F. Income Tax Benefits for FIEs Based on Geographical Location

To promote economic development and attract foreign investment, ''productive'' FIEs located in coastal economic zones, special economic zones, or economic and technical development zones in the PRC receive preferential tax rates depending on the zone. This program was first enacted on June 15, 1988, pursuant to the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Zones, as issued by the Ministry of Finance. The program was continued on July 1, 1991, pursuant to Article 30 of the FIE Tax Law. Pursuant to Article 7 of the FIE Tax Law, productive FIEs established in a coastal economic development zone, special economic zone, or economic technology development zone, receive preferential income tax rates of 15 or 24 percent, depending on the zones in which the companies are located, as opposed to the standard 30 percent income tax rate. The Department has previously found this program to be countervailable. *See*, *e.g.*, Citric Acid Decision Memorandum at ''Reduced Income Tax Rates to FIEs Based on Location.''

Eastfound Material reported that it received an income tax reduction under this program with respect to the tax return it filed during the POI. Neither DHMP nor Eastfound Metal used this program during the POI.

We preliminarily determine that the reduced income tax rate paid by ''productive'' FIEs under this program confers a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue foregone by the GOC and provides a benefit to the recipient in the amount of the tax savings within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act. We further preliminarily determine that the reduction afforded by this program is limited to enterprises located in designated geographical regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Eastfound Material as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POI by the total consolidated sales for Eastfound. To compute the amount of the tax savings, we compared the income tax rate that Eastfound Material would have paid in absence of the program (30 percent) with the preferential tax rate (24 percent). On this basis, we preliminarily calculated a total net subsidy rate of 0.16 percent ad valorem for Eastfound.

Further, respondents reported that the GOC terminated the Tax Benefits for FIEs Based on Geographic Location program on January 1, 2008. We will continue to examine their claims that this program has been terminated.

G. Income Tax Exemption for Investors in Designated Geographical Regions within Liaoning

Under Article 9 of the FIE Tax Law, the provincial governments, the autonomous regions, and the centrally governed municipalities have been delegated the authority to provide exemptions and reductions of local income tax for industries and projects for which foreign investment is encouraged. As such, the local governments establish the eligibility criteria and administer the application process for any local tax reductions or exemptions.

To promote economic development and attract foreign investment, the Jinzhou District of the City of Dalian, Liaoning Province exempts industries in the Jinzhou District from local income tax for seven years from the first profit–making year and extends that exemption for three more years for enterprises with projects encouraged by the Dalian Government. The Department has previously found income tax exemption programs that are limited to certain geographical regions to be countervailable. *See*, *e.g.*, Citric Acid Decision Memorandum at ''Reduced Income Tax Rates to FIEs Based on Location.''

Eastfound Material is located in Jinzhou District and enjoyed the exemption of local income tax rate of three percent during the POI. Eastfound Metal and DHMP did not use this program during the POI.

We preliminarily determine that the exempted income tax rate offered to FIEs in Jinzhou District under this program confers a countervailable subsidy. The exempted rate is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine preliminarily that the exemption afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Eastfound Material as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the combined total sales of Eastfound during that period. To compute the amount of the tax savings, we compared the income tax rate Eastfound Material would have paid in the absence of the program (3 percent) with the rate it paid (0 percent).

On this basis, we preliminarily determine that Eastfound received a countervailable subsidy of 0.08 percent *ad valorem* under this program.

H. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non–eligible items. The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. The Department has previously found this program to be countervailable. *See*, *e.g.*, Citric Acid Decision Memorandum at ''VAT Rebate on Purchases by FIEs of Domestically Produced Equipment.''

Eastfound Metal, an FIE, reported receiving VAT and tariff exemptions under this program for imported equipment. DHMP and Eastfound Material did not use this program.

We preliminarily determine that the VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue

forgone by the GOC and the exemptions provide a benefit to the recipients in the amount of the VAT and tariff savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further preliminarily determine that the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises. As described above, only FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program. No information has been provided to demonstrate that the beneficiary companies are a non–specific group. As noted above under ''Two Free/Three Half'' program, the Department finds FIEs to be a specific group under section 771(5A)(D)(i) of the Act. The additional certain enterprises requiring approval by the NDRC does not render the program to be non–specific. This analysis is consistent with the Department's approach in prior CVD proceedings. *See*, *e.g.*, CFS Decision Memorandum at Comment 16, and Tires Decision Memorandum at ''VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries.''

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non–recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2). Therefore, we are examining the VAT and tariff exemptions that Eastfound Metal received under the program during the POI and prior years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach in prior cases. *See*, *e.g.*, *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Line Pipe Decision Memorandum) at Comment 8 (''. . . we agree with petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties''). Next, we summed the amount of duty and VAT exemptions received in each year. For each year, we then divided the total grant amount by the corresponding total sales for the year in question. For Eastfound Metal, the total amount of the VAT and tariff exemptions for each year approved was less than 0.5 percent for Eastfound's total sales for the respective year. Therefore, we do not reach the issue of whether Eastfound Metal's VAT and tariff exemptions were tied to the capital structure of capital assets of the firm. Instead, we expense the benefit to the year in which the benefit is received, consistent with 19 CFR 351.524(a). On this basis, we preliminarily determine the countervailable subsidy to be 0.02 percent *ad valorem* for Eastfound.

The GOC reported that pursuant to the Notice of Ministry of Finance, General Administration of Customs and General Bureau of State Taxation, No. 43 (2008) (Notice 43), dated December 25, 2008, the VAT exemption linked to imported equipment under this program has been terminated but the import tariff exemption has not been terminated. *See* GOC's Initial Questionnaire Response at 59–60 and Exhibit 29 (September 10, 2009). Article 1 of Notice 43 states that as of January 1, 2009, VAT on imported equipment for self–use in domestic and foreign investment projects as encouraged and stipulated in Circular 37 will be resumed and the custom duty exemption will remain in effect. Article 4 of Notice 43 provides for a transition period for the termination of the VAT exemption. Under Article 4, for a project which has a letter of confirmation prior to November 10, 2008, and the imported equipment has been declared with customs before June 30, 2009, VAT and tariff can be exempted. However, for imported equipment for which the import customs declaration is made on or after July 1, 2009, VAT will be collected. As such, the GOC stated the latest possible date for companies to claim or apply for a VAT exemption under this program was June 30, 2009. The GOC reported that there is no replacement VAT exemption program.

Under 19 CFR 351.526(a)(1) and (2), the Department may take a program–wide change to a subsidy program into account in establishing the cash deposit rate if it determines that subsequent to the POI, but before the preliminary determination, a program–wide change occurred and the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question. With regard to this program, we preliminarily determine that a program–wide change has not occurred and have not adjusted the cash deposit rate. Under 351.526(d)(1), the Department will only adjust the cash deposit rate of a terminated program if there are no residual benefits. This program provides benefits that may be allocated over the AUL and, therefore, residual benefits may continue to be bestowed under this program after the termination date. We will, however, continue to examine the GOC's claim of termination of the VAT exemption portion of this program.

I. VAT Refunds for FIEs Purchasing Domestically–produced Equipment

As outlined in GUOSHUIFA (1999) No. 171, Notice of the State Administration of Taxation Concerning the Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs, the GOC refunds the VAT on purchases of certain domestic equipment to FIEs if the purchases are within the enterprise's investment amount and if the equipment falls under a tax–free category. Article 3 specifies that this program is limited to FIEs with completed tax registrations and with foreign investment in excess of 25 percent of the total investment in the enterprise. Article 4 defines the type of equipment eligible for the VAT exemption, which includes equipment falling under the Encouraged and Restricted B categories listed in the Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (No. 37 (1997)) and equipment for projects listed in the Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State. To receive the rebate, an FIE must meet the requirements above and, prior to the equipment purchase, bring its Registration Handbook for Purchase of Domestically Produced Equipment by FIEs as well as additional registration documents to the taxation administration for registration. After purchasing the equipment, FIEs must complete a Declaration Form for Tax Refund (or Exemption) of Exported Goods, and submit it with the registration documents to the tax administration. The Department has previously found this program to be countervailable. *See*, *e.g.*, Citric Acid Decision Memorandum at ''VAT Rebate on Purchases by FIEs of Domestically Produced Equipment.''

Eastfound Metal and Eastfound Material reported receiving VAT

refunds on its purchases of domestically–produced equipment under this program. DHMP has not received VAT refunds under this program.

We preliminarily determine that the refund of the VAT paid on purchases of domestically–produced equipment by FIEs confers a countervailable subsidy. The rebates are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further preliminarily determine that the VAT rebates are contingent upon the use of domestic over imported goods and, hence, specific under section 771(5A)(C) of the Act.

Normally, we treat exemptions from indirect taxes and import charges, such as VAT refunds, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non–recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

We requested that Eastfound Metal and Eastfound Material identify the equipment for which it received VAT rebates from 2001 through the POI. For 2005 and 2008, the total amount of the VAT rebates approved was less than 0.5 percent of Eastfound's total sales for each year. Therefore, we have expensed the benefit to the year in which it is received, *i.e.*, 2005 and 2008, respectively, which is consistent with 19 CFR 351.524(a).

For 2007, however, the total amount of VAT rebates exceeded 0.5 percent of Eastfound's total sales for that year. Based on the reported information, the VAT rebates were for capital equipment. Accordingly, we are treating the VAT refunds for this year as a non–recurring benefit consistent with 19 CFR 351.524(c)(2)(iii). To calculate the countervailable subsidy for Eastfound, we used our standard methodology for non–recurring benefits. *See* 19 CFR 351.524(b) and the ''Allocation Period'' section of this notice. Specifically, we used the discount rate described above in the ''Benchmarks and Discount Rates'' section to calculate the amount of the benefit for the POI.

We then summed the benefits allocated and expensed to the POI and divided that amount by Eastfound's total consolidated sales for 2008. On this basis, we preliminarily determine the countervailable subsidy to be 0.13 percent *ad valorem* for Eastfound.

As discussed above, pursuant to 19 CFR 351.526(a)(1) and (2), the Department may take a program–wide change to a subsidy program into account in establishing the cash deposit rate if it determines that subsequent to the POI, but before the preliminary determination, a program–wide change occurred and the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question.

The GOC reported that, pursuant to the Notice for Termination of Tax Refund for FIE Purchasing Domestically Produced Equipment, No. 176 (CS 2008), this program has been terminated. *See* GOC's Initial Questionnaire Response at 87 (September 10, 2009). The GOC stated that Article 1 of the regulation provides that since January 1, 2009, the policy of VAT refund for purchase of domestically–produced equipment by FIEs is terminated. *Id.* at Exhibit 35. Article II(2) provides for a transition period, provided that (1) the investment project received a letter of confirmation that the FIE project is in conformity with state industry policy before November 9, 2008, and it was registered with the tax authorities, and (2) the domestically–produced equipment was purchased and VAT invoice was issued and claims for VAT refund were filed with the tax authorities prior to June 30, 2009.

As such, the GOC stated that the last day for companies to apply for or claim benefits under the program is June 30, 2009, provided that the ratification and purchase of the equipment were made prior to that date. *Id.* at 87. The GOC, however, did not report the last date that a company could receive VAT refunds under this program. Under section 351.526(d), the Department will not adjust the cash deposit rate for a terminated program if residual benefits may continue to be bestowed under the program. Because benefits from this program may be allocated over the AUL, we preliminarily determine that residual benefits may continue to be bestowed under the program. Therefore, we have not adjusted the cash deposit rate.

J. International Market Exploration Fund (SME Fund)

The SME Fund, established under CQ(2000) No. 467, encourages the development of small and medium–sized enterprises (SMEs) by reducing the risk of operation for these enterprises in the international market. To qualify for the program, a company needs to satisfy the criteria in CQ (2000), which provides that the SME should have export and import rights, exports of less than $15,000,000, an accounting system, personnel with foreign trade skills, and a plan for exploring the international market.[29] The GOC reported that, for the mandatory respondents, the Dalian Foreign Economic and Trade Bureau and the Financial Bureau of Dalian are the authorities responsible for this program that provides one–time assistance for each approved application. Eastfound Metal and Eastfound Material reported receiving assistance under this program.

We preliminarily determine that the SME Fund provides countervailable subsidies within the meaning of section 771(5) of the Act. We preliminarily find that the grants constitute a financial contribution and benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We also preliminarily determine that this program is an export subsidy, under section 771(5A)(B) of the Act, because the program supports the international market activities of SMEs and is limited to enterprises that have exports of less than $15,000,000.

According to the GOC, the SME Fund provides one–time assistance. Therefore, consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as ''non–recurring.'' To measure the benefits of each grant that are allocable to the POI, we first conducted the ''0.5 percent test'' for each grant. *See* 19 CFR 351.524(b)(2). We divided the total amounts approved in each year by the relevant sales for those years. As a result, we found that all grants for Eastfound are less than 0.5 percent and expensed in the year of receipt. Therefore, for the POI, we have preliminarily calculated a total net subsidy rate of 0.01 percent *ad valorem* for Eastfound.

II. Programs Preliminarily Determined To Not Confer Benefits During the POI

A. Provision of Zinc for LTAR

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold zinc to the mandatory respondents for LTAR. Eastfound reported that it did not purchase zinc during the POI. DHMP reported purchasing zinc during the POI from a trading company. In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non–producing supplier, a subsidy is conferred if the

[29] *See* GOC's fourth supplemental questionnaire response at 4 (October 5, 2009).

producer of the input is an ''authority'' within the meaning of section 771(5)(B) of the Act and the input was sold to the respondent for LTAR. *See* CWP Decision Memorandum at ''Hot–Rolled Steel for Less Than Adequate Remuneration,'' Shelving Decision Memorandum at ''Provision of Wire Rod for Less than Adequate Remuneration,'' and CWASPP Decision Memorandum at ''Provision of SSC for LTAR.'' Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC together identify the producers from whom the trading companies acquired the zinc that was subsequently sold to DHMP during the POI and to provide information that would allow the Department to determine whether those producers were government authorities.

As explained above in the ''Application of Facts Available: Provision of Zinc for LTAR'' section, DHMP and the GOC did not identify the producer(s) of the zinc that was purchased by DHMP during the POI. Because DHMP and the GOC have not supplied the requested information, we find that the necessary information is not on the record and, as a result, we are resorting to the use of facts available within the meaning of sections 776(a)(1) and (2) of the Act.

In its response, the GOC provided information on the amount of zinc produced by SOEs and private producers in the PRC. Using these data, we derived the ratio of zinc produced by government authorities during the POI. Thus, pursuant to sections 776(a)(1) and (2) of the Act, we have resorted to the use of facts available with regard to zinc sold to DHMP. Specifically, we assumed that the percentage of zinc produced by government authorities is equal to the ratio of zinc produced by government authorities during the POI. On this basis, we find that a financial contribution, as described under section 771(5)(D)(iv) of the Act, was provided with regard to DHMP's purchases of zinc during the POI.

With respect to specificity, one of the three subsidy elements specified under the Act, the GOC has provided information on end uses for zinc. *See* GOC's Initial Questionnaire Response at 25 (September 10, 2009). The GOC further stated that the consumption of zinc occurs across a broad range of industries (*e.g.*, galvanized steel products, alkaline batteries, various metal alloys, etc.). *Id.* While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. *See* section 771(5A)(D)(iii)(I) of the Act; *see also* LWRP Decision Memorandum at Comment 7, and Shelving Decision Memorandum at ''Provision of Wire Rod from Less Than Adequate Remuneration.''

Having addressed the issue of financial contribution and specificity, we must next analyze whether the sale of zinc to DHMP by government authorities conferred a benefit within the meaning of section 771(5)(iv) of the Act. The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market–determined benchmarks for measuring the adequacy of remuneration for government–provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See* Softwood Lumber Decision Memorandum at ''Market–Based Benchmark.''

Beginning with tier–one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *CVD Preamble*:

> Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See CVD Preamble, 63 FR at 65377. The *CVD Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. As explained above in the ''Application of Facts Available: Provision of Zinc for LTAR'' section, based on the aggregate data supplied by the GOC, we find for purposes of the preliminary determination that government authorities accounted for approximately 67 percent of zinc production during the POI. Therefore, we preliminarily determine that domestic zinc prices are not viable tier–one prices as described under 19 CFR 351.511(a)(2)(i).

We next examined whether the record contained data that could be used as a tier–two zinc benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for zinc, as sourced from the American Metals Market (AMA). *See* Petitioners' Pre–Preliminary Determination Comments on Benchmarks at Exhibit 3 (October 19, 2009) (Petitioners' Benchmark Comments). The benchmark prices are reported on a monthly basis in U.S. dollars per metric ton (MT). No other interested party submitted tier–two zinc prices on the record of this investigation.

Therefore, for purposes of the preliminary determination, we find that the data from AMA should be used to derive a tier–two, world market price for zinc that would be available to purchasers of zinc in the PRC. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. *See*, *e.g.*, CWP Decision Memorandum at ''Hot–Rolled Steel for Less Than Adequate Remuneration,'' and LWRP Decision Memorandum at ''Hot–Rolled Steel for Less Than Adequate Remuneration.'' Further, we find that, for purposes of this preliminary determination, there is no basis to conclude that prices from the AMA are any less reliable or representative than data from other trade industry publications used by the Department in prior CVD proceedings involving the PRC.

To determine whether zinc suppliers, acting as government authorities, sold zinc to DHMP for LTAR, we compared the prices DHMP paid to its suppliers to our zinc benchmark price. We conducted our comparison on a monthly basis. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by the DHMP for its purchases of zinc.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier–one or tier–two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, at this time we lack information concerning delivery charges and, therefore, have not

adjusted the benchmark in this regard, but will continue to seek the relevant information. However, we have added import duties, as reported by the GOC, and the VAT applicable to imports of zinc into the PRC. With respect to the three percent insurance charge on imports noted by the petitioner, consistent with *Shelving from the PRC*, while the Department will consider in future determinations the propriety of including insurance as a delivery charge, the existing record of this investigation does not support such an adjustment. *See* Shelving from the PRC Decision Memorandum at Comment 9.

Comparing the benchmark unit prices to the unit prices paid by DHMP for zinc, we determine that zinc was not provided for LTAR and that a benefit does not exist. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

B. Export Incentive Payments Characterized as ''VAT Rebates''

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted ''exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.'' *See* 19 CFR 351.517(a); *see also* 19 CFR 351.102 (for a definition of ''indirect tax''). To determine whether the GOC provided a benefit under this program, we compared the VAT exemption upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. The GOC reported that the VAT levied on wire decking sales in the domestic market is 17 percent and that the VAT exempted upon the export of wire decking is 5 percent. Thus, we have preliminarily determined that the VAT exempted upon the export of wire decking did not confer a countervailable benefit because the amount of the VAT rebated on export is lower than the amount paid in the domestic market.

III. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that DHMP and Eastfound did not apply for or receive benefits during the POI under the programs listed below:

A. Loan Programs

1. Honorable Enterprise Program
2. Preferential Loans for Key Projects and Technologies
3. Preferential Loans as Part of the Northeast Revitalization Program
4. Policy Loans for Firms Located in Industrial Zones in the City of Dalian in Liaoning Province

B. Provision of Goods and Services for LTAR

1. Provision of Water for LTAR for Firms Located in Designated Geographical Areas in the City of Dalian in Liaoning Province

C. Income and Other Direct Taxes

1. Income Tax Credits for Domestically–Owned Companies Purchasing Domestically Produced Equipment
2. Income Tax Exemption for Investment in Domestic Technological Renovation
3. Preferential Income Tax Policy for Enterprises in the Northeast Region
4. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China

D. Indirect Tax and Tariff Exemptions

1. VAT Deductions on Fixed Assets
2. VAT Exemptions for Newly Purchased Equipment in the Jinzhou District

E. Grant Programs

1. Five Points, One Line
2. Export Interest Subsidies
3. State Key Technology Project Fund
4. Subsidies for Development of Famous Export Brands and China World Top Brands
5. Sub–Central Government Programs to Promote Famous Export Brands and China World Top Brands
6. Exemption of Fees for Firms Located in Designated Geographical Areas in the City of Dalian in Liaoning Province

F. Preferential Income Tax Subsidies for FIEs

1. Income Tax Exemption Program for Export–Oriented FIEs
2. Local Income Tax Exemption and Reduction Programs for Productive FIEs
3. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by DHMP, Eastfound, and the GOC prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for subject merchandise produced and exported by the entities listed below. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Producer/Exporter	Net Subsidy *Ad Valorem* Rate
Dalian Eastfound Metal Products Co., Ltd. (Eastfound Metal) and its affiliate Dalian Eastfound Material Handling Products Co., Ltd. (Eastfound Material) (collectively, Eastfound)	3.13%
Dalian Huameilong Metal Products Co., Ltd. (DHMP)	2.02%
Aceally (Xiamen) Technology Co., Ltd.	437.73%
Alida Wire Mesh & Wire Cloth Mfg.	437.73%
Anping Ankai Hardware & Mesh Products Co., Ltd	437.73%
Anping County Jincheng Metal Products Co., Ltd.	437.73%
Anping County Yuantong Hardware Net Industry Co., Ltd.	437.73%
Anping Ruiqilong Wire Mesh Co., Ltd.	437.73%
Anping Web Wire Mesh Co., Ltd.	437.73%
Anping Yilian Metal Products Co., Ltd.	437.73%
Aplus Industrial (HK) Ltd.	437.73%
Beijing Jiuwei Storage Equipment Co., Ltd.	437.73%
Dalian Aipute Industry & Trade Co., Ltd.	437.73%
Dalian Best Metal Products Co., Ltd.	437.73%
Dalian Jianda Metal Products Co., Ltd.	437.73%
Dalian Litainer Logistic Equipment Co., Ltd.	437.73%
Dalian Litainer Metal Products Co., Ltd.	437.73%
Dalian Pro Metal Co., Ltd.	437.73%
Dalian Traction Motor Co., Ltd.	437.73%
Dalian Yutiein Storage Manufacture Co., Ltd.	437.73%

Producer/Exporter	Net Subsidy *Ad Valorem* Rate
Dalian Zengtian Metal–Net Production Co., Ltd.	437.73%
Dandong Riqian Equipment Co., Ltd.	437.73%
Deyoma Wire Decking Factory	437.73%
Global Storage Equipment Manufacturer Ltd. (Huade Industries)	437.73%
Hebei Dongshengyuan Trading Co., Ltd.	437.73%
Hebei Tengyue Trading Co., Ltd.	437.73%
High Hope Int'l Group Jiangsu Native Produce Imp & Exp Corp. Ltd.	437.73%
Imex China Ltd.	437.73%
Jiangdong Xinguang Metal Product Co.	437.73%
Jiangsu Nova Logistics System Co., Ltd.	437.73%
Jiangsu Sainty Shengtong Imp & Exp Co.	437.73%
JP Metal Works Processing Factory	437.73%
Kule (Dalian) Co., Ltd.	437.73%
Kunshan Maxshow Industry Trade Co., Ltd.	437.73%
Lanxuan Metal Product Co., Ltd.	437.73%
Longkou Forever Developed Metal Product Co., Ltd.	437.73%
Nanjing Better Metallic Products Co., Ltd.	437.73%
Nanjing Better Storage Equipment Manufacturing Co., Ltd.	437.73%
Nanjing Dongtuo Logistics Equipment Co., Ltd.	437.73%
Nanjing Ebil Metal Products Co., Ltd.	437.73%
Nanjing Huade Storage Equipment Manufacture Co., Ltd.	437.73%
Nanjing Jiangrui International Logistics Co.	437.73%
Nanjing Jiangrui Metal Products Co., Ltd.	437.73%
Nanjing Jiangrui Racking Manufacture Co., Ltd.	437.73%
Nanjing Youerda Logistic Equipment Engineering Co. Ltd	437.73%
Nanjing Youerda Metallic Products Co., Ltd.	437.73%
National Sourcing Co., Ltd.	437.73%
Ningbo Beilun Songyi Storage Equipment Manufacturer Co., Ltd.	437.73%
Ningbo Huixing Metal Product, Co., Ltd.	437.73%
Ningbo Telingtong Metal Products Co., Ltd.	437.73%
Ningbo United Group Imp & Exp Co. Ltd.	437.73%
Pinghu Dong Zhi Metal Products	437.73%
Schenker International China Ltd. (Dalian Branch)	437.73%
Shanghai Boracs Logistics Equipment Manufacturing Co., Ltd.	437.73%
Shanghai Bright Imp & Exp Co., Ltd.	437.73%
Shanghai Flory Industries Co., Ltd.	437.73%
Shanghai Hesheng Hardware Products Co.	437.73%
Shanghai Jingxing Storage Equipment Engineering Co., Ltd. (formerly Shanghai Jinxing Rack Factory)	437.73%
Shanghai Yibai Int'l Trading Co.	437.73%
Summit Storage Systems Ltd.	437.73%
Suzhou (China) Sunshine Hardware Equipment Imp & Exp Co., Ltd.	437.73%
Suzhou Jinta Metal Working Co., Ltd.	437.73%
Suzhou Z–TAK Metal and Technology Co., Ltd.	437.73%
Tianjin Dingxing Furniture Company	437.73%
Tianjin Machinery Imp & Exp Corp.	437.73%
Tianjin Mandarin Import & Export Co., Ltd.	437.73%
Tianjin Zhonglian Metals Ware Co., Ltd.	437.73%
TMC Logistic Products	437.73%
Vida Logistics System Co., Ltd.	437.73%
Wuxi Puhui Metal Products Co., Ltd.	437.73%
Wuyi Tianchi Mechanical & Electrical Manufacture Co., Ltd.	437.73%
Xiamen E–Soon Machinery Co., Ltd.	437.73%
Xiamen GaoPing Co., Ltd.	437.73%
Xiamen Luckyroc Industry Co., Ltd.	437.73%
Xiangshan Ningbo General Steel Metal Structure Co., Ltd.	437.73%
Yuyao Sanlian Goods Shelves Manufacture Co., Ltd.	437.73%
All Others	2.58%

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. The all others rate may not include zero and *de minimis* net subsidy rates, or any rates based solely on the facts available.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the ''all others'' rate by weight averaging the rates of DHMP and Eastfound because doing so risks disclosure of proprietary information. Therefore, for the all others rate, we have calculated a simple average of the two responding firms' rates.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: November 2, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–26947 Filed 11–6–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–274–804)

Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago; Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: On November 24, 2008, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on carbon and alloy steel wire rod (wire rod) from Trinidad and Tobago for the period of review (POR) October 1, 2007, through September 30, 2008.

We preliminarily determine that during the POR, ArcelorMittal Point Lisas Limited, and its affiliate ArcelorMittal International America LLC (collectively, AMPL) made sales of subject merchandise at less than normal value (NV). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. The Department will issue the final results within 120 days after publication of the preliminary results.

EFFECTIVE DATE: November 9, 2009.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Jolanta Lawska, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–8362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2002, the Department published in the **Federal Register** the antidumping duty order on wire rod from Trinidad and Tobago; *see Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002) (Wire Rod Orders). On October 1, 2008, the Department published in the **Federal Register** the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 57056 (October 1, 2008).

On October 31, 2008, we received timely request for review from petitioners,[1] and AMPL, in accordance with 19 CFR 351.213(b)(2). On November 24, 2008, the Department published the notice of initiation of this antidumping duty administrative review covering the period October 1, 2007, through September 30, 2008, naming AMPL as the respondent. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 70964 (November 24, 2008).

On December 3, 2008, we sent the initial questionnaire covering sections A through D to AMPL. On January 30, 2009, AMPL submitted its sections A through C response to the Department's questionnaire. On February 20, 2009, AMPL submitted its section D response to the Department's questionnaire. On March 19, 2009, the Department sent to AMPL a supplemental questionnaire for sections A through C. We received the response to the supplemental questionnaire on April 16, 2009. On April 30, 2009, petitioners submitted comments on the April 16, 2009, supplemental questionnaire response from AMPL. On May 14, 2009, the Department issued a second supplemental section A–C questionnaire, and on June 4, 2009, AMPL submitted its response. The Department issued a supplemental questionnaire for section D on June 15, 2009, and received the response on July 13, 2009. On August 4, 2009, the Department issued a second supplemental section D questionnaire, and received the response on August 14, 2009.

On May 7, 2009, the Department published a notice extending the time period for issuing the preliminary results of the administrative review from July 3, 2009, to November 2, 2009. *See Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago: Extension of Time Limit for the Preliminary Results of Antidumping*

[1] Petitioners are ISG Georgetown Inc., Nucor Steel Connecticut Inc., Keystone Consolidated Industries Inc., and Rocky Mountain Steel Mills.

Duty Administrative Review, 74 FR 21330 (May 7, 2009).

Verification

Pursuant to section 782(i) of the Act, the Department conducted verifications of the questionnaire response submitted by AMPL in August and September 2009. *See* Memorandum to The File, ''Verification of the Sales Response of ArcelorMittal Point Lisas Limited in the Antidumping Review of Certain Alloy Steel Wire Rod from Trinidad and Tobago,'' (November 2, 2009) and ''Verification of the Cost Response of ArcelorMittal Point Lisas Limited and ArcelorMittal International America LLC in the Antidumping Review of Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago,'' (November 2, 2009). The verification reports are available on file in the Central Records Unit (CRU), Room 1117 of the Department's main building.

On October 20, 2009, the Department received a revised home market and U.S. market sales database based on minor corrections submitted at verification as well as verification findings noted in the Memorandum to The File, ''Preliminary Sales Calculation Memorandum for ArcelorMittal Point Lisas Limited,'' (November 2, 2009) (Preliminary Sales Calculation Memorandum), which is also available in the CRU. On October 20, 2009, the Department also received a revised cost database based on minor corrections submitted at the cost verification.

Scope of the Order

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of grade 1080 tire cord quality wire rod and grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis – that is, the direction of rolling – of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The merchandise subject to this order are classifiable under subheadings 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 721.39.3093, 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6085, 7227.90.6050, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, and 7227.90.6080 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes,

the written description of the scope of this order is dispositive.[2]

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (the Act), all products produced by the respondent covered by the description in the Scope of the Order section, above, and sold in Trinidad and Tobago during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: grade range, carbon content range, surface quality, deoxidation, maximum total residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above. Where there were no sales of similar merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to constructed value (CV).

Comparisons to Normal Value

To determine whether sales of wire rod from Trinidad and Tobago were made in the United States at less than NV, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted–average prices for NV and compared these to individual U.S. transactions. In accordance with section 773(a)(4) of the Act, we calculated CV when we were unable to find a weighted–average price at a time contemporaneous with the U.S. sales.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight, international freight, demurrage expenses, marine insurance, other transportation expenses, and U.S. customs duties.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include inventory carrying costs incurred by affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Normal Value

A. Selection of Comparison Markets

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared AMPL's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because AMPL had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

B. Cost of Production Analysis

In the most recently completed segment of the proceeding in which AMPL participated, the Department found that the respondent made sales in the home market at prices below the cost of producing the merchandise and excluded such sales from the calculation of NV. *See Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 65833 (November 5, 2008), unchanged in *Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago; Final Results of Antidumping Duty Administrative Review*, 74 FR 10722 (March 12, 2009). Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, the Department determined that there were reasonable grounds to believe or suspect that AMPL made sales of wire rod in Trinidad and Tobago at prices below the cost of production (COP) in this administrative review. As a result, we initiated a COP inquiry for AMPL.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted–average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses, packing expenses, and interest expense.

a) Based on its contention that the total cost of manufacturing for wire rod products increased by more than 25 percent during the POR, AMPL reported its production costs on a quarterly basis. In our June 15, 2009, supplemental D questionnaire, we instructed AMPL to provide weighted–average POR costs for each CONNUM. We also instructed AMPL to recalculate the quarterly costs such that only the main input driving the large cost changes was reported on a quarterly basis, with all remaining cost elements calculated on an annual average basis. Based on our evaluation of AMPL's revised quarterly cost file, we found that the change in the TOTCOM from the lowest quarter for each CONNUM to the highest quarter for the same CONNUM reflected a change that was below the 25 percent threshold. Consequently, for the preliminary results we used the single POR weighted–average annual costs consistent with the Department's standard practice. *See Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5.

b) We disallowed AMPL's finished goods inventory adjustment to the reported costs because the cost of manufacturing of the merchandise under consideration (*i.e.*, wire rod) must necessarily be derived based on the POR costs incurred and should not take into account the value of wire rod in beginning inventory. *See Notice of Final Results of the Changed Circumstances Review of the Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products from Thailand*, 74 FR 22885 (May 15, 2009), and accompanying

[2] Effective July 1, 2008, CBP reclassified certain HTSUS numbers related to the subject merchandise. See *http://www.usitc.gov/publications/docs/tata/hts/bychapter/0810chgs.pdf.*

Issues and Decision Memorandum at Comment 6.

c) We adjusted the reported cost of iron ore to reflect the amount by which the cost of shipping services exceeded the transfer price paid to an affiliated supplier for the service.

d) We adjusted the general and administrative (G&A) expense ratio by disallowing an offset that AMPL took to its G&A expenses for the collection of a previously written off bad debt.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted–average COP to the per–unit price of the comparison market sales of the foreign like product, to determine whether these sales were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below–cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses and packing expenses which were excluded from COP for comparison purposes.

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below–cost sales occurring during the entire POR. In such cases, because we compared prices to POR–average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded below–cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Comparison Market Prices

For certain comparisons, we based home market prices on packed prices to unaffiliated purchasers in Trinidad and Tobago. We adjusted the starting price for inland freight pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit directly linked to sales transactions). No other adjustments to NV were claimed or allowed.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise, using POR–average costs.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison–market sales, NV may be based on CV. In this review, AMPL did not have identical or similar comparison market sales at a time contemporaneous with certain U.S. sales. Accordingly, we based NV for these comparisons on the CV. Section 773(e) of the Act provides that the CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general and administrative (SG&A) expenses, profit, and U.S. packing costs. We based SG&A expenses and profit on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign–like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We relied on the CV data submitted by AMPL with the exception of the adjustments as noted in the ''Cost of Production Analysis'' section, above. *See also*, Memorandum to The File, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – ArcelorMittal Point Lisas Limited and ArcelorMittal International America LLC,'' (November 2, 2009).

In addition, we made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses to, CV.

E. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. In identifying LOTs for EP and comparison market sales (*i.e.*, NV based on home market), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision).

In the home market, AMPL reported sales made through one LOT corresponding to one channel of distribution. In the U.S. market, AMPL reported two LOTs corresponding to two channels of distribution. AMPL made sales to an unaffiliated trading company and through its U.S. affiliates. We have determined that the sales made by AMPL directly to U.S. customers are EP sales and those made by AMPL's affiliated U.S. resellers constitute CEP sales. Furthermore, we have found that U.S. sales and home market sales were made at the same LOT. Accordingly, we did not find it necessary to make an LOT adjustment or CEP offset. For further explanation of our LOT analysis,

see the Preliminary Sales Calculation Memorandum.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted–average dumping margin exists for the period October 1, 2007, through September 30, 2008:

Producer/Manufacturer	Weighted–Average Margin
AMPL	23.95%

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs limited to issues raised in the case briefs may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, within 120 days of publication of these preliminary results. *See* section 751(a)(3)(A) of the Act.

Assessment Rate

The Department shall determine and CBP shall assess antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Upon issuance of the final results of this administrative review, if any importer–specific assessment rates calculated in the final results are above *de minimis (i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer or customer and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific ad valorem rate is greater than *de minimis*, and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)- specific *ad valorem* rate is greater than *de minimis* and we do not have reliable entered values, we calculate a per–unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

On November 2, 2007, consistent with the Court's decision in *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990), we published a notice of a Court's decision not in harmony with the final determination of injury by the International Trade Commission. *See Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Notice of Court Decision Not in Harmony with Final Determination of The Antidumping Duty Investigation*, 72 FR 62208 (November 2, 2007). This notice states that we will suspend liquidation of subject merchandise entered after July 16, 2007, pending a final and conclusive court decision. *See id*. Therefore, liquidation for entries made during the period October 1, 2007, through September 30, 2008, is suspended pending a final court decision in the case involving the ITC's final determination of injury.

Cash Deposit Requirements

To calculate the cash deposit rate for AMPL, we divided the total dumping margin by the total net value for AMPL's sales during the POR.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of wire rod from Trinidad and Tobago entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for AMPL will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.40 percent, the all–others rate established in the LTFV investigation. *See Wire Rod Orders*. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 2, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–26943 Filed 11–6–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on certain helical spring lock washers (''HSLWs'') from the People's Republic of China (''PRC'') covering the period of review (''POR'') October 1, 2007 through September 30, 2008. We preliminarily determine that sales have been made below normal value (''NV'') by Hangzhou Spring Washer Co., Ltd. (''HSW'') (also known as Zhejiang Wanxin Group Co., Ltd.). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR. The Department invites interested parties to comment on these preliminary results.

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

FOR FURTHER INFORMATION CONTACT: Brandon Farlander, Austin Redington or David Layton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0182, (202) 482–1664, and (202) 482–0371, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on certain HSLWs from the PRC on October 19, 1993. The order was amended on November 23, 1993. *See Antidumping Duty Order: Certain Helical Spring Lock Washers From the People's Republic of China,* 58 FR 53914 (October 19, 1993), and *Amended Final Determination and Amended Antidumping Duty Order: Certain Helical Spring Lock Washers From the People's Republic of China,* 58 FR 61859 (November 23, 1993). On October 1, 2008, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 73 FR 57056 (October 1, 2008). In accordance with 19 CFR 351.213(b)(1) and (2), on October 31, 2008, Shakeproof Assembly Components Division of Illinois Tool Works, Inc. (''Shakeproof'' or ''Petitioner''), a domestic interested party, requested that the Department conduct an administrative review of HSW, a producer and exporter of subject merchandise.

On November 24, 2008, the Department published the initiation of the administrative review of the antidumping duty order on HSLWs from the PRC covering the period October 1, 2007, through September 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 73 FR 70964 (November 24, 2008).

The Department issued an antidumping duty questionnaire to HSW on December 10, 2008. We received the questionnaire responses from HSW on January 14, 2009, and February 12, 2009. We received supplemental questionnaire responses from HSW on July 10, 2009, September 29, 2009, October 6, 2009 and October 14, 2009.

The Department informed interested parties that surrogate country selection comments submitted by February 25, 2009, would be considered for the preliminary results. *See* Letter to IPs: Deadlines for Surrogate Country Comments. Neither of the interested parties provided comments on the selection of a surrogate country. On March 30, 2009, Petitioner provided publicly available information to value the factors of production (''FOPs'').

On June 23, 2009, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of this review until November 2, 2009. *See Certain Helical Spring Lock Washers from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the 2007–2008 Antidumping Duty Administrative Review,* 74 FR 29669 (June 23, 2009).

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006); *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review,* 71 FR 34893 (June 16, 2006); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006) (''*Sawblades*''). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country and Surrogate Values

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department if NV cannot be determined pursuant to section 773(a) of the Act. In accordance with section 773(c)(4) of the Act, the Department valued the FOPs, to the extent possible, using the costs of the FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the PRC and are significant producers of comparable merchandise. The Department determined that Colombia, India, Indonesia, the Philippines, Peru and Thailand are countries comparable to the PRC in terms of economic development. *See* Memorandum from Carole Showers, Acting Director, Office of Policy, to Brandon Farlander, Program Manager, Office 1, entitled ''Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Helical Spring Lock Washers'' (''HSLW'') from the People's Republic of China (''PRC''), dated December 22, 2008 (''Policy Memo'').

On January 16, 2009, the Department solicited comments on its selection of surrogate countries for this administrative review and also invited

parties to submit publicly available information to value FOPs. Between March 30, 2009 and July 27, 2009, the Department received surrogate value information from Petitioner and HSW.

We preliminarily determine that India is comparable to the PRC in terms of per capita gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. *See* Memorandum from the Team to the File entitled, ''2007–2008 Antidumping Duty Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China: Selection of a Surrogate Country,'' November 2, 2009.

Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from these countries. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004. The Department finds India to be a reliable source for surrogate values because India is at a comparable level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. Furthermore, the Department notes that India has been the primary surrogate country in past segments, and the only surrogate value data submitted on the record are from Indian sources.

Given the above facts, the Department has selected India as the primary surrogate country for this review.

For a detailed discussion of the Department's selection of surrogate values and financial ratios, *see* ''Factor Valuations'' section below. *See also* Memorandum from the Team to the File, entitled ''2007–2008 Antidumping Duty Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China: Factor Valuation for the Preliminary Results,'' November 2, 2009, (''Factor Valuation Memorandum''), which is on file in the Central Records Unit (''CRU'') in Room 1117 of the main Department of Commerce building.

Scope of the Order

The products covered by the order are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to the order are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Separate Rates Determination

A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act. Accordingly, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty deposit rate (*i.e.,* a country-wide rate). *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006); *see also Sawblades,* 71 FR 29303.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Final Determination of Sales at Less than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

Absence of De Jure Control

The Department considers the following criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

HSW has placed on the record documents to demonstrate the absence of *de jure* control. These documents include its list of shareholders, business license, approval of company name and Company Law of the People's Republic of China (''Company Law''). Other than limiting HSW to activities referenced in the business license, we found no restrictive stipulations associated with the license. In addition, in previous cases the Department has analyzed the Company Law and found that it establishes an absence of *de jure* control. *See, e.g., Sawblades,* 71 FR 29303, and accompanying Issues and Decision Memorandum at Comment 9. We have no information in this proceeding that would cause us to reconsider this determination. Therefore, based on the foregoing, we preliminarily find an absence of *de jure* control for HSW based on: (1) An absence of restrictive stipulations associated with the exporter's business license; (2) the legal authority on the record decentralizing control over the respondent, as demonstrated by the PRC laws placed on the record of this review; and (3) other formal measures by the government decentralizing control of companies.

Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide,* 59 FR at 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department typically considers the following four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government agency; (2) whether the respondent has the authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87, *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the*

People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

With regard to *de facto* control, HSW reported the following: (1) It sets prices to the United States through negotiations with customers and these prices are not subject to review by any government organization; (2) the PRC government does not coordinate the export activities of HSW; (3) HSW's general manager and deputy general manager have the authority to contractually bind the company to sell subject merchandise; (4) the board of directors has appointed the general manager, and the other managers are appointed either by the board of directors or the general manager; (5) there is no restriction on its use of export revenues; and (6) HSW's management decides how to dispose of the profits. Additionally, HSW's questionnaire responses do not suggest that pricing is coordinated among exporters nor does it reveal other information indicating government control of export activities. As a result, there is a sufficient basis to preliminarily determine that HSW has demonstrated a *de facto* absence of government control of its export functions and is entitled to a separate rate. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over HSW's export functions.

Fair Value Comparisons

To determine whether HSW's sales of subject merchandise were made at less than NV, we compared the NV to individual export price (''EP'') transactions in accordance with section 777A(d)(2) of the Act. *See* ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

In accordance with section 772(a) of the Act, EP is ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date importation by the producer or exporter of the subject merchandise outside of the United States or to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,'' as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EPs for sales by HSW to the United States because the subject merchandise was sold directly to unaffiliated customers in the United States (or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States) prior to importation, and constructed export price methodology was not otherwise indicated. We based EP on one of the following sales delivery terms: (1) Free-on-board port; (2) cost, insurance and freight; or (3) cost and freight to unaffiliated purchasers in the United States. In accordance with section 772 (c)(2)(A) of the Act, we made deductions for movement expenses, where appropriate. Movement expenses included expenses for foreign inland freight from plant to port of exportation, foreign brokerage and handling, international freight, and marine insurance, where applicable. Foreign inland freight, foreign brokerage and handling, international freight, and marine insurance were provided by an NME vendor and, thus, as explained in the section below, we based the amounts of the deductions for these movement charges on values from a surrogate country. For a detailed description of all adjustments, *see* Memorandum from Brandon Farlander, Program Manager, Office 1, to the File entitled ''Analysis for the Preliminary Results of Antidumping Duty Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China.'' (''Preliminary Calculation Memorandum''), November 2, 2009.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by: Agro Dutch Industries Ltd. in *Mushrooms from India*; Kejirwal Paper Ltd. in *Lined Paper Products From India*; and Essar Steel in HRS *from India*.[1] We identify the source used to value foreign inland freight, international freight, and marine insurance in the ''Normal Value'' section of this notice, below. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for these values using the wholesale price indices (''WPI'') for India as published in the *International Financial Statistics* (''IFS'') *Online Service* maintained by the Statistics Department of the International Monetary Fund at the Web site *http://www.imfstatistics.org*.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factor of production methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department will base NV on FOPs because the presence of government controls on various aspects of these NME economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by HSW for materials, energy, labor, and packing.

With regard to the Indian import-based surrogate values, we have disregarded prices that we have reason to believe or suspect may be subsidized. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1. We have found that India, Indonesia, South Korea, and Thailand maintain broadly available, non-industry-specific export subsidies, and it is reasonable to infer that exports to all markets from these countries may be subsidized. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review,* 71 FR 14170 (March 21, 2006); and *China Nat'l Machinery Import &*

[1] *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006) (''*Mushrooms from India*''); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006) (''*Lined Paper Products From India*''), unchanged *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2021 (January 12, 2006), unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 40694 (July 18, 2006) (''*HRS from India*'').

Export Corp. v. United States, 293 F. Supp. 2d 1334, 1336 (Ct. Int'l. Trade 2003), *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004).

In avoiding the use of prices that may be subsidized, the Department does not conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590–91 (1988), *reprinted* in 1988 U.S.C.C.A.N. 1547, 1623. Rather, the Department bases its decision on information that is available to it at the time it is making its determination. Therefore, we have not used prices from these countries either in calculating the Indian import-based surrogate values or, where applicable, in calculating ME input values. *See* Factor Valuation Memorandum.

Factor Valuations

In accordance with section 773(c)(3) of the Act, we calculated NV based on FOPs reported by HSW for the POR. We multiplied the reported per-unit factor quantities by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneousness of the data.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOPs using surrogate values that were in effect during the POR. If we were unable to obtain surrogate values that were in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, as applicable, except labor, using the WPI for the appropriate surrogate country as published in the IFS.

As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the Indian import surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory where appropriate (*i.e.*, where the sales terms for the ME inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997).

(1) *Chemical Inputs:* The respondent, HSW, reported the following chemical FOPs: hydrochloric acid; nitric acid; barium carbonate; and zinc chloride. In prior cases, the Department has valued chemical FOPs using *Chemical Weekly*, an Indian publication containing domestic (*i.e.*, Indian) prices for chemicals. *See Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 4175 (January 24, 2008), and accompanying Issues and Decision Memorandum at Comment 4; *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009), and accompanying Issues and Decision Memorandum at Comment 3 (''*Glycine from PRC Final 2009*'').

In 1999 and 2003, representatives from *Chemical Weekly* informed the Department that unless the price quote specified the chemical purity level, the reported prices for chemicals in liquid form were based on one hundred percent purity levels. *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 69503 (December 13, 1999), and accompanying Issues and Decision Memorandum at Comment 2, November 22, 1999, Memo to the File from Christopher Priddy; *Synthetic Indigo from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 53711 (September 12, 2003), and accompanying Issues and Decision Memorandum at Comment 5. Accordingly, when *Chemical Weekly* did not specify the concentration level at which a particular chemical was reported, the Department treated the *Chemical Weekly* price as reflecting a one hundred percent concentration level. *See id.* Based on this, when a respondent reported the purity level of a chemical FOP in a liquid form, the Department could adjust the *Chemical Weekly* prices by the purity level reported by the respondent to obtain a surrogate value specific to the purity level of the chemical FOP consumed by the respondent. *See Glycine from PRC Final 2009*, at Comment 3; *Final Determination of Sales at Less than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China*, 58 FR 48833, 48846 (September 20, 1993). Thus, when the record included values from both World Trade Atlas (''WTA'') and *Chemical Weekly*, and the WTA data did not indicate the concentration level for the chemical, the Department would select *Chemical Weekly* as the best available information for valuing the chemical FOP because it was more specific to the input actually used.

The Department recently contacted *Chemical Weekly* to reconfirm that the price quotes for chemicals, with no purity level indicated, reflected one hundred percent purity levels. The Department was informed by representatives of *Chemical Weekly* that the reported price for hydrochloric acid in liquid form reflects a 30–33 percent purity level. Moreover, the representatives did not believe any of the other chemical prices were at a one hundred percent purity level. *See* Factor Valuation Memo, at Attachment 3. Based on these recent statements, which contradict prior statements made by *Chemical Weekly* representatives, unless the price quotes from *Chemical Weekly* indicate the purity level, the Department will treat the purity level of chemicals sold in either liquid or solid form as unknown. Therefore, from here on, except for price quotes that identify the purity level of the chemical and for hydrochloric acid (because we have been informed that the purity level is 30–33 percent), the Department will assume that the purity level of all other chemicals sold in either liquid or solid form as reported by *Chemical Weekly* is unknown and, thus, will no longer make an adjustment. Since the purity level is unknown for these chemicals, the Department finds that making such an adjustment using the respondent's reported purity level would not result in a surrogate value that is specific to the purity level of the respondent's chemical FOP.

In light of the above, we have analyzed the WTA and *Chemical Weekly* values for barium carbonate, nitric acid, and zinc chloride. In each instance the import data reported in the WTA conforms to the FOP used by HSW. Accordingly, for HSW's barium carbonate, nitric acid, and zinc chloride FOPs, the Department finds that the WTA data represents the best available information on the record for valuing these chemicals. While we consider both WTA and *Chemical Weekly* to be reliable, comparable, public, and contemporaneous, we are using WTA to value these chemicals because the WTA represents a value from the whole of India, whereas the *Chemical Weekly* value is derived from prices in just three of India's major markets for barium carbonate, two of India's major markets for nitric acid, and three of India's major markets for zinc chloride.

For HSW's hydrochloric acid, the *Chemical Weekly* data represents the best available information on the record for valuing this FOP. As stated above, while we consider both WTA and *Chemical Weekly* to be reliable, comparable, public, and contemporaneous, the *Chemical Weekly* prices are more specific to the type of hydrochloric acid used by HSW. This is because the purity level of hydrochloric acid used by HSW is within the purity

level range of hydrochloric acid reported by *Chemical Weekly* (30–33 percent). *See* HSW's February 12, 2009, section D response at Exhibit D–5. In contrast, the WTA data for hydrochloric acid, HTS category 2806.10.00 (hydrochloric acid), does not state a chemical concentration level. *See HSLW Final 2008*, at Comment 4. Therefore, in accordance with our new practice, the Department preliminarily finds that *Chemical Weekly* represents the best available information for valuing hydrochloric acid because the *Chemical Weekly* price quote for hydrochloric acid is specific to the purity level of the FOP used by HSW.

(2) We valued HSW's steel wire rod using price data fully contemporaneous with the POR for 6mm, 8mm, 12mm and 16mm steel wire rod available on the Web site of the Indian Joint Planning Committee (''JPC''). The JPC is a joint industry/government board that monitors Indian steel prices. These data are publicly available, specific to the input in question, represent a broad market average, and are tax-exclusive since the Central Excise Tax and VAT have been removed. *See* Factor Valuation Memo at Attachment 2; *see also* Petitioner's SV Submission, (March 30, 2009) at Attachment 1, and Petitioner's Correction to Calculation Error (April 3, 2009). Specifically, we calculated a weighted-average steel wire rod value by weighting the average JPC values for the different dimensions by HSW's consumption of these dimensions. *See* Factor Valuation Memo at Attachment 2; *see also* HSW Supplemental Questionnaire response, (October 6, 2009) at Attachment 1.

(3) We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled ''Electricity Tariff & Duty and Average Rates of Electricity Supply in India,'' dated July 2006. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India.

(4) Section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. Therefore, we valued labor using the regression-based wage rate for China published on IA's Web site. The source of the wage rate data on the Import Administration's Web site is the International Labour Organization (''ILO''), Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. *See* Expected Wages of Selected NME Countries (revised November 2008) (available at *http://ia.ita.doc.gov/wages/index.html*). Since this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor.

(5) We derived ratios for factory overhead, depreciation, and selling, general and administrative expenses, interest expenses, and profit for the finished product using the 2007–2008 financial statements of two Indian companies, M/S Shivalik Wires Pvt. Ltd. and Sterling Tools Ltd., in accordance with the Department's practice with respect to selecting financial statements for use in NME cases. *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 2. The Department prefers to derive financial ratios using data from those surrogate producers whose financial data will not be distorted by subsidies or otherwise unreliable. *See Magnesium Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 40293 (July 14, 2008), and accompanying Issues and Decision Memorandum at Comment 3. We found that these two Indian companies use steel wire rod inputs similar to those used by HSW, and both manufacture merchandise comparable to that produced by HSW. Specifically, one company produces nuts, and the other company produces both nuts and washers. Because both use steel wire rod as their input, we believe their production processes are similar to HSW's. We did not rely on other Indian companies' financial statements that were on the record because these companies did not use wire rod and, hence, do not appear to employ the same production process as HSW, or, for another Indian company that did use wire rod, the company's financial statements showed that it received subsidies.

(6) We valued inland truck freight expenses using a per-unit average rate calculated from data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm*. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since the truck rate value is based on an annual per-unit rate which includes two months of transactions falling in the POR, we are treating the derived average rate as contemporaneous. For rail freight, we use 2007–2008 data from the Web site *www.Indianrailways.gov* to derive, where appropriate, input-specific train rates on a rupees per kilogram per kilometer basis (''Rs/kg/km''). For ship freight applicable to one domestic input, HSW did not report whether it was an NME or market economy carrier and, therefore, for the preliminary determination we used a surrogate international freight value from *www.maerskline.com.*

For further discussion of the surrogate values we used for these preliminary results of review, *see* the Factor Valuation Memorandum, which is on file in the Central Records Unit (''CRU'') in Room 1117 of the main Department of Commerce building.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following margin exists for the period October 1, 2007 through September 30, 2008:

Manufacturer/exporter	Margin (percent)
Hangzhou Spring Washer Co. Ltd. (also known as Zhejiang Wanxin Group Co., Ltd.)	20.68

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the

submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(ii). Rebuttal briefs are limited to issues raised in the case briefs and may be filed no later than five days after the time limit for filing the case briefs. See 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Also, an interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). We will issue a memorandum identifying the date of a hearing, if one is requested.

The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this administration review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer- or customer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. To determine whether the duty assessment rates are *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate customer-specific *ad valorem* ratios based on export prices.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer- or customer-specific assessment rate calculated in the final results of this review is above *de minimis.*

For entries of the subject merchandise during the POR from companies not subject to this review, we will instruct CBP to liquidate them at the cash deposit rate in effect at the time of entry. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

For HSW, we have calculated customer-specific antidumping duty assessment amounts for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. We calculated these assessment amounts because there is no information on the record which identifies entered values or the importers of record for the U.S. sales of HSW.

Cash Deposit Requirements

The following cash deposit requirements will apply to all shipments of certain helical spring lock washers from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For HSW, which has a separate rate, the cash deposit rate will be the rate established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 128.63 percent; and (4) the cash deposit rate for any non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

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

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

Dated: November 2, 2009.

Ronald Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–26945 Filed 11–6–09; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1650]

Reorganization/Expansion of Foreign-Trade Zone 15 Kansas City, MO

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

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 15, submitted an application to the Board for authority to reorganize and expand FTZ 15 in the Kansas City, area, within the Kansas City Customs and Border Protection port of entry (FTZ Docket 14–2009, filed 4/8/2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 17634–17635, 4/16/2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

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

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 15 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a time limit that will terminate authority for Site 13 on October 31, 2014, subject to extension upon review.

Signed at Washington, DC, this 23rd day of October 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–26934 Filed 11–6–09; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Tuesday, November 10, 2009, 2 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Weekly Report—Commission Briefing

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: October 30, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–26732 Filed 11–6–09; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, November 10, 2009, 9 a.m.–12 noon (Morning sessions may carry over into the afternoon).

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Briefing/Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

1. Public Database Staff Briefing.
2. Public Database—Public Hearing for Stakeholders, including Staff Questions (Hearing announced in **Federal Register** notice dated Thursday, October 22, 2009, page 54552).

A live Webcast of the Briefing/Meeting can be viewed at *http://www.cpsc.gov/webcast/index.html.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: October 30, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–26733 Filed 11–6–09; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 74, No. 199/Friday, October 16, 2009, page 53219.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m.–11 a.m., Wednesday, October 21, 2009.

CHANGES IN MEETING: Agenda Items on Electronic Devices and Brass Lead Exclusions Petition were cancelled; Brass Lead Exclusions Petition is postponed to November 4, 2009.

The Commission voted unanimously (5–0) to changes of meeting.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: October 27, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–26735 Filed 11–6–09; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Monday, November 9, 2009, 1 p.m.–3 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Briefing/Meeting—Open to the Public.

MATTER TO BE CONSIDERED:

1. Guidance Document on Testing and Certification

A live webcast of the Briefing/Meeting can be viewed at *http://www.cpsc.gov/webcast/index.html.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: October 30, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–26734 Filed 11–6–09; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 09–53]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–53 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 30, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH STE 203
ARLINGTON, VA 22202-5408

OCT 26 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-53, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Morocco for defense articles and services estimated to cost $134 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Transmittal No. 09-53

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Morocco

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 63 million
Other	$ 71 million
TOTAL	$134 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** three CH-47D CHINOOK Helicopters with 6 (2 per helicopter) T55-GA-714A Turbine engines, 2 spare T-55-GA-714A Turbine engines, 4 AN/ARC-201E Single Channel Ground and Airborne Radio Systems (SINCGARS), mission equipment, communication and navigation equipment, ground support equipment, spare and repair parts, special tools and test equipment, technical data and publications, site survey, Quality Assurance Team support, contractor technical and logistics personnel services, and other related elements of logistics support.

(iv) **Military Department:** Army (USE)

(v) **Prior Related Cases, if any:** None

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** OCT 26 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Morocco – CH-47D CHINOOK Helicopters

The Government of Morocco has requested a possible sale of three CH-47D CHINOOK Helicopters with 6 (2 per helicopter) T55-GA-714A Turbine engines, 2 spare T-55-GA-714A Turbine engines, 4 AN/ARC-201E Single Channel Ground and Airborne Radio Systems (SINCGARS), mission equipment, communication and navigation equipment, ground support equipment, spare and repair parts, special tools and test equipment, technical data and publications, site survey, U.S. government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $134 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the security of a major Non-NATO ally which has been, and continues to be, an important force for the political stability and economic progress in Africa.

Morocco needs these helicopters to improve its capability to meet current and future needs for humanitarian missions. Delivery of these helicopters will make it a more valuable partner in an increasingly important area of the world.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be The Boeing Company in Philadelphia, PA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. government or contractor representatives to Morocco.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-53

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The CH-47D CHINOOK medium lift helicopter is a cargo helicopter, remanufactured from CH-47A, B, and C aircraft. The avionics system in the CH-47D consists of the communications equipment providing high frequency (AN/ARC-220), VHF AM/FM (AN/ARC-186) and UHF-AM (AN/ARC-164) communications. The navigation equipment includes ADF, VOR ILS Marker Beacon (AN/ARN-123), VHF Homing (AN/ARC-201) devices. Transponder equipment (AN/APX-117) consists of a receiver with inputs from the barometric altimeter for altitude encoding.

a. The AN/ARC-201E Single Channel Ground and Airborne Radio System (SINCGARS) is a tactical airborne radio subsystem that provides secure, anti-jam voice and data communication.

b. The AN/APX-117 transponder system provides automatic radar identification of the helicopter. The system receives, decodes, and replies to interrogations on modes 1,2,3/A,4.C and S from all suitable equipped challenging airborne and ground facilities. The receiver operates on 1,300 MHZ and the transmitter section operates on a frequency of 1090MHZ. Because these frequencies are in the UHF band, the operational range is limited to line-of-site.

c. The AN/ARC-186 provides communication in the VHF, AM, and FM bands. Up to 20 channels plus two guard channels can be pre-stored in the set. The set operates on the AM/FM modes, and the frequency AM reception is between 108.00 and 151.975 MHZ. The AM receiver transmits between 116.000 and 151.975 MHZ and FM transmitter receives, with a homing range of 30.000 to 87.975 MHZ.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E9–26862 Filed 11–6–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0172]

Proposed Collection; Comment Request

AGENCY: Defense Technical Information Center (DTIC), DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Technical Information Center (DTIC) announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 8, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Technical Information Center (DTIC), Marketing and Registration Division, 8725 John J. Kingman Road, Suite 0944, ATTN: Ms. Angela Davis, Ft. Belvoir, VA 22060–6218, or call the DTIC Marketing and Registration Division at (703) 767–8207.

Title and OMB Number: Customer Satisfaction Surveys—Generic Clearance; OMB Control Number 0704–0403.

Needs and Uses: The information collection requirement is necessary to assess the level of service the DTIC provides to its current customers. The surveys will provide information on the

level of overall customer satisfaction as well as on customer satisfaction with several attributes of service that impact the level of overall satisfaction. These customer satisfaction surveys are required to implement Executive Order 12862, ''Setting Customer Service Standards.'' Respondents are DTIC registered users who are components of the DoD, military services, other Federal Government Agencies, U.S. Government contractors, and universities involved in federally funded research. The information obtained by these surveys will be used to assist agency senior management in determining agency business policies and processes that should be selected for examination, modification, and reengineering from the customer's perspective. These surveys will also provide statistical and demographic basis for the design of follow-on surveys. Future surveys will be used to assist monitoring of changes in the level of customer satisfaction over time.

Affected Public: Business or other for-profit; not-for-profit institutions.

Annual Burden Hours: 810.

Number of Respondents: 12,150.

Responses per Respondent: 1.

Average Burden per Response: 4 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The purpose of these surveys is to assess the level of service DTIC provides to its current customers. The surveys will provide information on the level of overall customer satisfaction and on customer satisfaction with several attributes of service which impact the level of overall satisfaction. The objectives of the survey are to help DTIC (1) gauge the level of satisfaction among users and (2) identify possible areas for improving our products and services. The surveys are designed to assist in evaluating the following knowledge objectives:

- To improve customer retention;
- To determine the perceived quality of products, service, and customer care;
- To indicate trends in products, services, and customer care;
- To benchmark DTIC's customer satisfaction results with other Federal government agencies.

Dated: November 4, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26890 Filed 11–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0170]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 8, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Manpower Data Center (DMDC) ATTN: Dr. Timothy Elig, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593, or call at (703) 696–5858.

Title, Associated Form, and OMB Control Number: Department of Defense National Survey of Employers.

Needs and Uses: The Department of Defense National Survey of Employers is designed to determine ways of supporting employers when Guard and Reserve employees are absent due to military duties, determine general attitudes toward Guard and Reserve employees and their contributions to employers, and examine knowledge of and compliance with Uniformed Services Employment and Reemployment Rights Act.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, local or tribal government.

Annual Burden Hours: 125,000 hours.

Number of Respondents: 250,000.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that persons who serve or have served in the Armed Forces, Reserves, National Guard or other ''uniformed services:'' (1) Are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; and (3) are not discriminated against in employment based on past, present, or future military service. The Act covers members of the Uniformed Services, any other category of persons designated by the President in time of war or national emergency, and their government and civilian employers. It is the responsibility of the Employer Support of the Guard and Reserve (ESGR) to promote cooperation and understanding between Reserve component members and their civilian employers and to assist in the resolution of conflicts arising from an employee's military commitment. The Department of Defense National Survey of Employers is being conducted on a statistically random basis to determine best practices of ESGR in supporting employers of Reserve and Guard members and to evaluate the effectiveness of ESGR and DoD programs. The information collected is used for overall program evaluation, management and improvement.

Dated: November 3, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26892 Filed 11–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0171]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 8, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy/Accession Policy), ATTN: Major Arturo Roque, 4000 Defense Pentagon, Washington, DC 20301–4000, or call at (703) 695–5527.

Title, Associated Form, and OMB Control Number: Title from OMB Form 83–I, block 7; Report of Medical History; DD Form 2807–1, Medical Prescreen of Medical History Report; DD Form 2807–2, OMB Number 0704–0413.

Needs and Uses: Title 10, U.S.C. chapter 31: sections 504 and 505, and chapter 33, section 532, require applicants to meet accession medical standards prior to enlistment into the Armed Forces (including the Coast Guard). If applicants' medical history reveals a medical condition that does not meet the accession medical standards, they are medically disqualified for military entrance. This form also will be used by all Service members not only in their initial medical examination but also for periodic medical examinations.

Affected Public: Individuals or households, not-for profit.

Annual Burden Hours: 135,833.

Number of Respondents: 850,000.

Responses per Respondent: 1.

Average Burden per Response: 50 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

These forms obtain medical information which affects entrance physical examinations, routine in-service physical examinations, separation physical examinations, and other medical examinations as required. The respondents are all applicants for enlistment, induction or commissioning, or service members. The respondents complete the medical history information recorded on the form. Medical professionals complete the remaining sections and the information collected, provides the Armed Services with the medical history of applicants. The DD Forms 2807–1 and 2807–2 are the method of collecting and verifying medical data on applicants applying for entrance as well as, for service members for medical evaluation purposes.

Dated: November 3, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26893 Filed 11–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Closed Meeting of the Defense Policy Board

AGENCY: Defense Policy Board, DoD.

ACTION: Notice.

SUMMARY: The Defense Policy Board will meet in closed session on December 3, 2009 from 0800 hrs until 1800 hrs and on December 4, 2009 from 0800 hrs until 1030 hrs at the Pentagon. The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B (c)(1)(1982), and that accordingly this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Hansen, 703–571–9232.

Dated: November 4, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26891 Filed 11–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Sealift Program, PM5; Tanker Government/Industry Monthly Meeting

AGENCY: Military Sealift Command, DoD.

ACTION: Announcement of monthly meetings.

SUMMARY: The Military Sealift Command (MSC) will be holding monthly meetings to partner with the commercial tanker industry. The intended effect of these meetings is to allow the commercial industry to be more cognizant of the Department of Defense (DoD) Petroleum, Oil, and Lubes (POL) Procurement Process.

DATES: The first meeting will be held on Tuesday, November 17, 2009 at 10 a.m.

The monthly meetings will continue to be held the third Tuesday of every month at 10 a.m. unless otherwise announced.

ADDRESSES: The first meeting will be held at MSC Headquarters, 914 Charles Morris Ct., SE., Washington Navy Yard, DC 20398.

For future meetings, attendees may request the exact meeting room by contacting one of the contacts under **FOR FURTHER INFORMATION CONTACT** one week prior to each meeting.

FOR FURTHER INFORMATION CONTACT: *Technical Contact:* John Joerger, 202–685–6305, *john.joerger@navy.mil.*

Contracting Contact: Ken Allen, 202–685–5825, *kenneth.allen@navy.mil.*

Dated: November 4, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26914 Filed 11–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Weapon Systems Acquisition Reform Act Organizational Conflicts of Interest Requirements

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: DoD is hosting a public meeting to establish an initial dialogue with industry and Government agencies about the requirements of section 207 of the Weapon Systems Acquisition Reform Act of 2009 (WSARA) relating to organizational conflicts of interest (OCI).

Time and Date: December 8, 2009, 1 p.m. to 4 p.m., EST

ADDRESSES: GSA Auditorium, 1800 F Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sandra K. Ross, CPIC/DPAP, at 703–695–9774. Please cite WSARA OCI Public Meeting.

SUPPLEMENTARY INFORMATION: DoD is interested in opening a dialogue with industry and Government agencies about the requirements of section 207 of the Weapon Systems Acquisition Reform Act of 2009 (Pub. L. 111–23) relating to organizational conflicts of interest. The public meeting contemplated by this notice will include dialogue on the possible impact on DoD contracting of the WSARA requirements relating to organizational conflicts of interest. Suggested areas for comments and presentations by attendees on section 207 are—

1. Organizational conflicts of interest related to lead system integrator contractors on major defense acquisition programs and follow-on contracts for production;

2. Ownership of business units performing systems engineering and technical assistance functions, professional services, or management support services of major defense acquisition programs in relation to the business units that compete to perform as supplier for such programs; and

3. Award of major subsystem contracts by the prime contractor for a major defense acquisition program to affiliated business units for—

a. Software integration or development of proprietary software system architecture; or

b. Providing technical evaluations on major defense acquisition programs.

Those planning to attend must FAX the following information to CPIC/DPAP, 703–614–1254, or e-mail to *Sandra.Ross@osd.mil* by December 3, 2009:

- Company or Organization Name.
- Names of persons attending.
- Identify if desiring to speak; limit to a 10-minute presentation per company or organization.
- Last four digits of the social security number for anyone who is not a Federal Government employee with a Government badge, in order to create an attendee list for secure entry to the GSA building.

Interested parties are encouraged to arrive at least 30 minutes early to accommodate security procedures.

If you wish to make a presentation, please contact and submit a copy of your presentation 5 days prior to the meeting date, to CPIC/DPAP, 3060 Pentagon, Room 5E621, Attn: Sandra Ross, Washington, DC 20301–3060. Telephone: 703–695–9774. Submit electronic materials via e-mail to *Sandra.Ross@osd.mil.* Please submit presentations only and cite WSARA OCI Public Meeting in all correspondence related to the public meeting. The submitted presentations will be the only record of the public meeting.

Special Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Sandra Ross at 703–695–9774, at least 5 working days prior to the meeting date.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

[FR Doc. E9–26964 Filed 11–6–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Notice of Meeting

AGENCY: U.S. Air Force Academy Board of Visitors.

ACTION: Meeting notice.

SUMMARY: Pursuant to 10 U.S.C. 9355, the US Air Force Academy (USAFA) Board of Visitors (BoV) will meet in the Russell Senate Office Building, Room 236, Washington, DC, on 10 December 2009. The meeting session will begin at 8 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant to Secretary of the Air Force has determined that a portion of this meeting shall be closed to the public. The Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that one portion of this meeting be closed to the public because it will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act (FACA) and the procedures described in this paragraph. Written statements must address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force Pentagon address detailed

below at any time. However, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present their issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific persons to make oral presentations before the BoV. Any oral presentations before the BoV shall be in accordance with 41 CFR 102–3.140(d), section 10(a)(3) of the FACA, and this paragraph. The DFO and BoV Chairperson may, if desired, allot a specific amount of time for members of the public to present their issues for BoV review and discussion. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

FOR FURTHER INFORMATION CONTACT: To attend this BoV meeting, contact Mr. David Boyle, USAFA Programs Manager, Directorate of Force Development, Deputy Chief of Staff, Manpower, Personnel and Services, AF/A1DOA, 2221 S. Clark St, Ste 500, Arlington, VA 22202, (703) 604–8158.

Bao-Anh Trinh,

YA–3, DAF, Air Force Federal Register Liaison Officer.

[FR Doc. E9–26941 Filed 11–6–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 9, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 4, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually; Monthly; Weekly.

Affected Public: Businesses or other for-profit; Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 21,696,675.

Burden Hours: 10,131,696.

Abstract: The Free Application for Federal Student Aid (FAFSA) collects the data necessary to determine a student's eligibility for participation in the following federal student assistance programs identified in the Higher Education Act (HEA): the Federal Pell Grant Program; the Campus-Based Programs; the William D. Ford Federal Direct Loan Program; the Federal Family Education Loan Program; the Academic Competitiveness Grant; the National Science and Mathematics Access to Retain Talent (SMART) Grant, and the Teacher Education Assistance for College and Higher Education (TEACH) Grant.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4120. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be 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. E9–26951 Filed 11–6–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 30, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–10–000.

Applicants: AEP Texas Central Company, AEP Texas North Company.

Description: American Electric Power Service Corp submits a request for disclaimer of jurisdiction, or in the alternative application for approvals.

Filed Date: 10/23/2009.

Accession Number: 20091030–0061.

Comment Date: 5 p.m. Eastern Time on Friday, November 13, 2009.

Docket Numbers: EC10–11–000.

Applicants: Cloud County Wind Farm, LLC, Pioneer Prairie Wind Farm

I, LLC, Arlington Wind Power Project LLC, Aircraft Services Corporation.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Acquisition of Securities by a Holding Company and Request for Expedited Action of Arlington Wind Power Project LLC, *et al.*

Filed Date: 10/29/2009.

Accession Number: 20091029–5097.

Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: EC10–12–000.

Applicants: Ridgeline Energy LLC, Wolverine Creek Goshen Interconnection,, Ridgeline Energy Holdings, Inc., Diamond Generating Corporation, Ridgeline Alternative Energy LLC, Ridgeline Holdings Junior Inc., Goshen Phase II LLC, Goshen Phase II Holdings LLC.

Description: Joint Application for Authorization of Disposition of Facilities under Section 203 of the Federal Power Act and Request for Confidential Treatment, Expedited Consideration and Waivers of Ridgeline Alternative Energy LLC, *et al.*

Filed Date: 10/29/2009.

Accession Number: 20091029–5099.

Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–198–011.

Applicants: Pacific Gas and Electric Company.

Description: Quarterly Report of Site Control for New Generation Capacity Development.

Filed Date: 10/29/2009.

Accession Number: 20091029–5088.

Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER07–1202–003.

Applicants: JD WIND 4, LLC.

Description: JD Wind 4, LLC Notice of Change in Status—Sites for New Generation Capacity Development.

Filed Date: 10/29/2009.

Accession Number: 20091029–5091.

Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Docket Numbers: ER07–1246–003; ER09–297–002.

Applicants: Harvest WindFarm, LLC, Michigan Wind 1, LLC.

Description: Notice of Change in Status—Sites for New Generation Capacity Development on behalf of Harvest Windfarm.

Filed Date: 10/29/2009.

Accession Number: 20091029–5093.

Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 2009.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR10–1–000.

Applicants: North American Electric Reliability Corp.

Description: Petition for Approval of Amendments to the Rules of Procedure of the North American Electric Reliability Corporation—New Section 412 and Appendix 4D.

Filed Date: 10/29/2009.

Accession Number: 20091029–5056.

Comment Date: 5 p.m. Eastern Time on Thursday, November 19, 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 email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–26899 Filed 11–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–9–000]

Dairyland Power Cooperative, Complainant, v. Midwest Independent Transmission Operator, Inc., Respondent; Notice of Complaint

November 2, 2009.

Take notice that on October 30, 2009, pursuant to sections 206 and 306 of the Federal Power Act (''FPA''), 16 U.S.C. 824e, 825e (2006) and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2009), Dairyland Power Cooperative (Dairyland) filed a complaint against Midwest Independent Transmission System Operator, Inc. (Midwest ISO), alleging that Attachment P of the Midwest ISO Tariff should be amended to include certain of Dairyland's Grandfathered Agreements.

Dairyland certifies that copies of the complaint were served on the contacts for Midwest ISO as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 19, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26888 Filed 11–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–8–000]

Town of Edinburg, Indiana, Complainant, v. Indiana Michigan Power Agency, Respondent; Notice of Complaint

November 2, 2009.

Take notice that on October 29, 2009, pursuant to sections 206 and 211A of the Federal Power Act, 16 U.S.C. 824e, and 824j–i, and Rule 206 of the Commission's regulations, 18 CFR 385.206, the Town of Edinburgh, (Complainant), filed a formal complaint against the Indiana Municipal Power Agency (Respondent) alleging that the Respondent is in violation of section 211A of the Federal Power Act for failure to charge Complainant a comparable transmission rate and resulting discriminatory overcharges against Complainant of at least $1.98 million for the period 2003 through 2009.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 18, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26887 Filed 11–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–11–000]

Natural Gas Infrastructure and Opportunities for Improved Efficiency; Notice of Conference Postponement

November 2, 2009.

Take notice that the public conference referenced in the above docket and initially noticed on September 21, 2009 will be postponed until January. Once the conference is rescheduled, a subsequent scheduling notice will be issued.

For more information about the conference or any questions, please contact Pamela Romano at (202) 502–6854 (*pamela.romano@ferc.gov*).

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26889 Filed 11–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2144–038—Washington]

City of Seattle, WA; Notice of Designation of Commission Staff as Non-Decisional

November 2, 2009.

Commission staff member James Hastreiter (Office of Energy Projects, 503–552–2760; *james.hastreiter@ferc.gov*) is hereby designated as ''non-decisional'' staff and assigned to participate in settlement discussions and provide guidance on the Commission's policies and authorities for the Boundary Hydroelectric Project in the above-referenced proceeding.

As ''non-decisional'' staff, Mr. Hastreiter will not participate in an advisory capacity in the Commission's review of any offer of settlement or settlement agreement, or deliberations concerning the disposition of the relicense application in the above-referenced proceeding.

Different Commission ''advisory staff'' will be assigned to review any offer of settlement or settlement agreement, and to process the relicense application, including providing advice to the Commission with respect to the agreement and the application. Non-decisional staff and advisory staff are prohibited from communicating with one another concerning the merits of the settlement and the relicense application.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26886 Filed 11–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–90–000]

Lonestar Energy Partners LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 30, 2009.

This is a supplemental notice in the above-referenced proceeding of Lonestar Energy Partners LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR

Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is November 19, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–26900 Filed 11–6–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8979–1]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Washburn, ND

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) 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 to the City of Washburn, ND for the Zenon ZeeWeed 1000 membrane filter manufactured by General Electric Water & Process Technologies for a capacity of 1.7 MGD. 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 project that may wish to use the same product must apply for a separate waiver based on project-specific circumstances. These membrane filters are manufactured in Canada, and meet the City of Washburn's performance specifications and requirements. The Acting Regional Administrator is making this determination based on the review and recommendation of EPA Region 8's Technical & Financial Services Unit. The City of Washburn has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of the Zenon ZeeWeed 1000 membrane filter for the Surface Water Treatment Plant upgrades being implemented by the City of Washburn that may otherwise be prohibited under Section 1605(a) of the ARRA.

DATES: *Effective Date:* October 23, 2009.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, ARRA Coordinator, (303) 312–7814, or Brian Friel, SRF Coordinator, (303) 312–6277, Technical & Financial Services Unit, Water Program, Office of Partnerships & Regulatory Assistance, U.S. EPA Region 8, 1595 Wynkoop St., Denver, CO 80202.

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 City of Washburn for the Zenon ZeeWeed 1000 model of submerged membranes which are manufactured in Canada.

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, in this case 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.

This manufactured good will be used as part of the City of Washburn's Surface Water Treatment Plant renovation. The City of Washburn states that only ZeeWeed 1000 submerged membranes meet the specific needs of this project. Because this is a renovation of an existing facility, the specifications appropriately require a technology that can be retrofitted to the existing filter basin. The City provided a copy of the contractor's specifications that state the product must be manufactured by Zenon Environmental, Inc. or equivalent because this reflects the parameters of the existing filter basin as to the technology being replaced, and the product must also meet certain performance standards for pH, turbidity, temperature, alkalinity, hardness, sodium, sulfate, chloride, iron and manganese.

The City also provided a letter from an engineer with the State of North Dakota asserting a lack of domestic alternatives to the Zenon ZeeWeed 1000 submerged membranes. The letter states, ''that the Zenon ZeeWeed 1000 membrane filter will be required to be used in Washburn and Valley City water treatment plant renovations because:

1. The Washburn and Valley City water treatment plant renovation projects will be using the existing infrastructure (existing filter bays) which require using the compact

immersed vacuum membrane filters. Membrane filters for this waiver are as defined in the *EPA Membrane Filter Guidance Manual* for compliance under the LT2ESWTR. Zenon is the only manufacturer of immersed vacuum membranes that meets the required specifications. The Zenon ZeeWeed 1000 membrane cartilages are manufactured in Canada, but all the piping, pumps, etc. will be manufactured and assembled in America.

2. The Zenon ZeeWeed 1000 membrane meets the requirements of the LT2ESWTR of 3.5 log removal of *Giardia* and 4.0 log removal of Cryptosporidium.

3. To the best of our knowledge, there are no current domestic membrane manufacturers that meet the specifications of the ZeeWeed 1000 membrane. Any domestic alternative membrane process would require extensive renovation and/or building addition resulting in substantial cost increases.''

A requirement by the primary regulatory enforcement agency of a State for a public water system to use a particular technology in order to comply with a National Primary Drinking Water Regulation (NPDWR), and/or the approval by that State agency of a particular compliance technology for a specific NPDWR, is a crucial prerequisite to initiation of a drinking water infrastructure project to bring that public water system into compliance with that NPDWR. Given this requirement by the State and in light of the reasonableness of the retrofit specification, Washburn did not have a basis to use an alternative compliance technology within the ARRA time requirements for SRF projects to be under contract or construction by February 17, 2010.

The April 28, 2009 EPA HQ Memorandum (''EPA April memo''), ''Implementation of Buy American provisions of Public Law 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.'' It further defines *satisfactory quality* as ''the quality of iron, steel, or the relevant manufactured good as specified in the project plans and designs.''

The applicant met the procedures specified for the availability inquiry as appropriate to the circumstances by conducting on-line research and contacting suppliers. All sources indicated that submerged ultrafiltration membrane treatment systems are only manufactured outside of the U.S. Therefore, based on the information provided to EPA, and to the best of our knowledge at this time, Zenon ZeeWeed 1000 submerged membranes are not manufactured in the United States, and no other U.S. manufactured product can meet the City Washburn's performance specifications and requirements.

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 cities such as Washburn 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 project implementation 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 dated September 25, 2009 based on the submitted waiver request. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. The report confirmed the waiver applicant's claim that there are no comparable domestic products that can meet the project specifications.

The Technical & Financial Services Unit has reviewed this waiver request and has determined that the supporting documentation provided by the City of Washburn is sufficient to meet the criteria listed under Section 1605(b) of the ARRA and in the EPA April memo: 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 project waiver is the authorization provided in Section 1605(b)(2) of the ARRA. 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 City of Washburn's performance 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 the 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 City of Washburn is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of Zenon ZeeWeed 1000 submerged membranes using ARRA funds as specified in the City's request of September 22, 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: October 23, 2009.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. E9–26960 Filed 11–6–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8979–4]

Control of Emissions From New Highway Vehicles and Engines: Approval of New Scheduled Maintenance for Selective Catalyst Reduction Technologies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has granted certain manufacturers new and limited variations in emission-related scheduled maintenance intervals for the replenishment of the nitrogen containing reducing agent for Selective Catalyst Reduction (SCR) technologies used in light-duty and chassis certified diesel vehicles for model years 2009–2010, and used in heavy-duty diesel vehicles and heavy-duty diesel engines for model years 2009–2011. SCR replenishment is considered critical emission-related maintenance.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (6405J), Washington, DC 20460. Telephone: (202) 343–9256. E-mail Address: *dickinson.david@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA adopted new emission standards for

light-duty vehicles and trucks on February 10, 2000 (65 FR 6698). Similarly EPA adopted new requirements for heavy-duty highway engines and vehicles on January 18, 2001 (66 FR 5002). Diesel engine and vehicle manufacturers have examined the use of several different types of NO_X reduction technologies in order to meet these requirements, including SCR systems which can achieve up to 90% NO_X conversion efficiencies. We expect that most manufacturers will use SCR systems to meet the NO_X reduction requirements for their diesel engines. SCR systems use a nitrogen containing reducing agent that usually contains urea and is known as diesel exhaust fluid (DEF). The DEF is injected into the exhaust gas and requires periodic replenishment by refilling the DEF tank.

Under 40 CFR 86.1834–01(b)(7)(ii) and 86.094–25(b)(7)(ii), a manufacturer must submit a request for approval for any new scheduled maintenance it wishes to recommend to purchasers and perform during durability testing. ''New scheduled maintenance'' is that maintenance which did not exist prior to the 1980 model year, including that which is a direct result of the implementation of new technology not found in production prior to the 1980 model year. In this instance EPA believes the maintenance of performing DEF refills on SCR systems should be considered as ''critical emission-related scheduled maintenance.'' EPA believes the existing allowable schedule maintenance mileage intervals applicable to catalytic converters are generally applicable to SCR systems which contain a catalyst, but that the DEF refills are a new type of maintenance uniquely associated with SCR systems. Therefore, the 100,000-mile interval at 40 CFR 86.1834–01(b)(4)(ii) for catalytic converters on diesel-cycle light-duty vehicles and light-duty trucks (and any other chassis-certified vehicles) and the 100,000-mile interval (and 100,000 mile intervals thereafter) for light heavy-duty diesel engines and the 100,000-mile interval (and 150,000 mile intervals thereafter) for medium and heavy heavy-duty diesel engines at 40 CFR 86.004–25(b)(4)(iii) are generally applicable to SCR systems. As noted, the SCR systems are a new type of technology designed to meet the newest emission standards and the DEF refill intervals represent a new type of scheduled maintenance; therefore, EPA believes that manufacturers may request from EPA the ability to perform the new scheduled maintenance of DEF refills. Requests from manufacturers for new scheduled maintenance intervals must include: (1) Detailed evidence supporting the need for the maintenance requested and (2) supporting data or other substantiation for the recommended maintenance category and for the interval suggested for the emission maintenance. Any emission-related maintenance must be technologically necessary to assure in-use compliance with the emission standards since minimum service intervals are established in part to ensure that the control of emissions is not compromised by a manufacturer's overly frequent scheduling of emission-related maintenance.

EPA has received information from the Alliance of Automobile Manufacturers (the Alliance) [1] indicating that it is technologically necessary and otherwise appropriate for light-duty vehicles and light-duty trucks to refill the DEF at intervals equal to the applicable vehicle's scheduled oil change interval for the 2009 and 2010 model years. The Alliance maintains that such vehicles do not yet have the carrying and storage capacity required for the quantity of DEF needed to satisfy the much longer maintenance intervals such as the 100,000 mile scheduled maintenance interval generally applicable to catalytic converters. In addition to the limited space available on vehicles for a large DEF tank, the Alliance also indicates that vehicles will be designed and equipped to ensure vehicle compliance with emission standards, DEF will be readily available and accessible to drivers, and that maintenance is likely to be performed.

EPA generally receives ''new scheduled maintenance'' requests, under 40 CFR 86.1834–01(b)(7)(ii) and 86.094–25(b)(7), from individual manufacturers. However, as discussed below EPA knows of no SCR technology for any light-duty or chassis certified vehicle that is yet capable of attaining higher mileage without a DEF refill. For example, one SCR light/duty vehicle in current production must find space to accommodate an 8 gallon DEF tank in addition to the separate fuel tank of 21 gallons in order to meet the oil change interval target. Assuming an oil change interval even of 10,000 miles in an 8 gallon DEF tank scenario, then a DEF tank size of 80 gallons would be required to meet a 100,000 mile DEF refill maintenance interval. Even a 16–20 gallon DEF tank (to meet a 2 oil change interval) would interfere with the space that is necessary for typical light-duty vehicle design and transportation needs of the consumer. Interior cabin volume and cargo space are highly valued attributes in light-duty vehicles. Manufacturers have historically strived to optimize these attributes, even to the point of switching a vehicle from rear-wheel drive to front-wheel drive to gain the extra interior cabin space taken up by where the drive shaft tunnel existed, or switching the size of the spare tire from a conventional sized tire to a small temporary tire to gain additional trunk space. Thus any significant interior, cargo or trunk space used to store a DEF tank would be unacceptable to customers. There are also packaging concerns with placing a large DEF tank in the engine compartment or in the vehicles undercarriage. Most vehicle undercarriages are already crowded with the engine, exhaust system, including catalytic converters and mufflers, fuel tank, *etc.* limiting any available space for a DEF tank.

In addition to the inherently space constrained areas on the vehicle to place both fuel tanks and DEF tanks (an additional 8 gallon tank represents a very significant demand for space) the addition of the weight associated with the DEF represents significant concerns (*e.g.* performance and efficient operation) on the operation of the vehicle. For example, assuming a density of 9 lb/gallon, an 8 gallon DEF tank represents an additional 72 lbs on a vehicle already looking to optimize performance. Adding additional DEF tank size to even accommodate a two-oil change interval is not feasible given these weight constraints. EPA expects manufacturers to face similar and significant engine or fuel tank compartment size and configuration constraints and to expend substantial effort to accommodate similar DEF tank and fuel tank size ratios. Therefore, EPA finds it appropriate to approve the DEF refill interval as requested for all light-duty vehicle and light-duty truck and other chassis certified vehicles in the 2009 or 2010 model years for manufacturers that are members of the Alliance of Automobile Manufacturers. For any manufacturers of light-duty vehicles and light-duty trucks that are not members of the Alliance of Automobile Manufacturers that introduce SCR technology in the 2009 or 2010 model years, such manufacturers would need to request this schedule separately, but we would expect to grant a similar maintenance schedule, based on the fact that SCR systems operate in

[1] The Alliance of Automobile Manufacturers represents BMW Group, Chrysler Group, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, and Volkswagen Group of America.

a similar manner that would similarly implicate the maintenance interval issues discussed above.

EPA believes it important to note that while not a specific criteria under paragraph (b)(7) of the regulations, because the DEF refill maintenance is considered ''critical emission-related maintenance,'' paragraph (b)(6) requires that there be a reasonable likelihood that the DEF maintenance refill will be performed in use. *See* §§ 86.1834–01(b)(6)(ii) and 86.094–25(6)(ii). EPA finds that it is likely such maintenance will be performed. A number of means are available to make this showing, including a clearly displayed visible signal system approved by the Administrator or data is presented which establishes for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical driving.

As discussed in EPA's Dear Manufacturer Letter of March 27, 2007 (''Certification Procedure for Light-Duty and Heavy-Duty Diesel Vehicles and Heavy-Duty Diesel Engines Using Selective Catalyst Reduction (SCR) Technologies'' reference number CISD–07–07 (LDV/LDT/MDPV/HDV/HDE), an SCR system utilizing a reducing agent that needs to be periodically replenished would meet the definition set forth in §§ 86.094–22(e)(1) and 86.1833–01(a)(1) and could be considered an adjustable parameter by the Agency. The regulations establish the requirements for determining the physically adjustable ranges of parameters, and EPA issued non-binding guidance in the March 27, 2007 Dear Manufacturer Letter concerning the determination under the regulations of whether operation without DEF is within the scope of such range for the particular engine. SCR design and manufacturer submitted information in that context can be used to assure that the DEF levels remain at proper ranges during the operation of the engine.

In addition, EPA notes that DEF refill maintenance interval being equivalent and occurring with the oil change interval is a fairly long interval (*e.g.* 7,500 to 12,500 miles) and is not likely to result in the overly frequent maintenance under typical vehicle driving. EPA also believes that an adequate DEF supply will be available to perform the DEF refills at the stated intervals. EPA believes it important to also consider when, where and how often vehicle owners or operators are most likely to perform the DEF refill maintenance. For light-duty vehicles and light-duty trucks EPA believes the requested DEF refill interval's association with the oil change interval is appropriate given the likelihood of DEF availability at service stations and the likelihood that DEF refill would occur during such service. The Agency has limited this approval to 2009 and 2010 model years due to the expectation that SCR related technologies and the urea infrastructure will continue to develop and mature and EPA plans to revisit this category of vehicles to determine appropriate future intervals. Should manufacturers continue to believe that the identified interval or other intervals are technologically necessary or otherwise appropriate after the 2010 model year we expect them to take this up with the Agency in a timely manner.

EPA has also received requests from Volvo Powertrain, Cummins, and from the Engine Manufacturers Association [2] seeking a series of DEF refill maintenance intervals for certain categories of heavy-duty engine applications. For vocational vehicles such as dump trucks, concrete mixers, refuse trucks and similar typically centrally fueled applications, the manufacturers believe the DEF tank refill interval should equal the range (in miles or hours) of the vehicle operation that is no less that the vehicle's fuel capacity (*i.e.*, a 1:1 ratio). For all other vehicles equipped with a constantly viewable DEF level indicator (*e.g.* a gauge or other mechanism on the dashboard that will notify the driver of the DEF fill level and the ability to warn the driver of the necessity to refill the DEF tank before other inducements (noted below) occur), the DEF tank refill interval must provide a range of vehicle operation that is no less than twice the range of vehicle's fuel capacity (*i.e.*, a 2:1 ratio) and for all other vehicles that do not have a constantly viewable DEF level indicator the DEF tank refill interval must provide a range of vehicle operation that is no less than three times the range of the vehicle's fuel capacity (*i.e.*, a 3:1 ratio).

EPA believes it is reasonable to base the DEF refilling event on diesel refueling intervals given that it is likely that the DEF refill maintenance would be undertaken at the time of fuel refill due to DEF infrastructure developed at diesel refueling stations. EPA agrees with manufacturers that the DEF refilling intervals requested are technologically necessary. EPA knows of no SCR technology for any heavy-duty engine application that is yet capable of attaining higher mileage without a DEF refill. As an example, assuming that 25,000 gallons of diesel fuel were consumed to reach a 150,000 mile interval, the amount of DEF required (assuming a 3% DEF consumption rate) would require 750 gallons of DEF weighing approximately 6,750 lbs. A line-haul truck is allowed a maximum gross vehicle weight of 85,000 lbs of which approximately 45,000 pounds is for cargo carrying. A DEF tank of this size would reduce the cargo-carrying capacity by 15%. Another example from the line haul industry suggests that a DEF tank size of over 900 gallons would be needed, to reach the 150,000 mile interval, for a common highway vehicle with a diesel fuel capacity of 200 gallons and achieving 6.5 miles per gallon fuel efficiency. Similarly, a medium heavy-duty engine (''chassis cabs'') example would require 375 gallons of DEF weighing 3,275 lbs to meet a 150,000 mile interval. EPA believes that such tank sizes are clearly not technologically feasible in light of the weight and space demands and constraints on heavy-duty trucks and the consumer demand for as much cargo carrying capacity as possible.

The Agency has also received information demonstrating that longer intervals than those requested by the manufacturers would require DEF tanks that are too large or too heavy to be feasibly incorporated into vehicles. Manufacturer representatives note that available data show that heavy-duty engines equipped with SCR-based systems will consume DEF at a rate that is approximately 2%–4% of the rate of diesel fuel consumption. Because of inherent space and weight constraints in the configuration and efficient operation of heavy-duty vehicles, there are size limits on the DEF tanks. Currently, there are truck weight limits that manufacturers must address when making, adding or modifying truck designs. EPA expects and believes that manufacturers are taking significant and appropriate steps in order to install reasonably sized DEF tanks to achieve the DEF refills intervals noted. For example, manufacturers are taking such steps as reducing the number of battery

[2] The Engine Manufacturers Association (EMA) represents, among others, American Honda Motor Company, Inc, Briggs & Stratton Corp, Caterpillar Inc, Chrysler LLC, CNH Global N.V., Cummins Inc., Daimler Trucks North America LLC, Deere & Company, Deutz Corporation, Dresser Waukesha, Fiat Powertrain Technologies S.p.A,, Kohler Company Inc, Komatsu Ltd, Kubota Engine America Corp, MTU Detroit Diesel Inc, Ford Motor Company, General Motors Corp, Hino Motors Ltd, Isuzu Manufacturing Services of America, Navistar Inc., Onan—Cummins Power Generation, PACCAR Inc, Scania CV AB, Volkswagen of America Inc, Wartsala North America, Inc, Yamaha Motor Corporation, and Yanmar America Corporation.

packs on vehicles despite customer demands or designing space saver configurations, in some instances extending an already very limited frame rail distance to incorporate the DEF tanks and SCR systems, moving compressed air tanks inside the frame rails, redesigning fuel tank configurations at significant cost, and otherwise working with significant size and weight constraints to incorporate DEF tanks. EMA notes that there are several factors that support the good engineering judgment that underlies the recommended DEF refill intervals. The great majority of heavy-duty engines produced will provide a range of vehicle operation that is no less than twice the range of the vehicle's fuel capacity; thus, the DEF tank size will provide at least double the vehicle's operating range as provided by the fuel tank. EMA notes that vehicle operators will generally refill DEF at the same time and location that they refill the tanks; thus, these vehicles will already be carrying twice as much DEF as the SCR system could ever consume between refills.

EPA was provided with examples of the consequences of requiring heavy-duty vehicles to accommodate a DEF refill interval of 5:1, and the information provided to the Agency strongly suggested that great compromises would be required in cost, weight and utility. Increased tank sizes and weights on the magnitude of 150 to 325 lbs. would be required and in some cases diesel fuel volumes would need to be reduced. The extra weight associated with the DEF required to meet the 2:1 or 3:1 refill intervals (again, operators are expected to refill the DEF and each diesel fuel refilling event) represents a significant challenge to manufacturers seeking to meet both weight and size requirements for their vehicle designs. EPA believes that in light of the existing tight space constraints and the overall desire to maximize cargo-carrying capacity to minimize emissions and meet consumer operational demands, and the built-in DEF tank size buffer to insure DEF refills, that the tank DEF tank sizes associated with the 2:1 refill and 3:1 intervals are technologically necessary. EPA believes that requiring tank sizes above these ratios will cause increases in space constraints and weight that would not be appropriate for these vehicles. Similarly, manufacturers note that only a small number of applications will employ the 1:1 refilling ratio and that such vehicle applications have very limited vehicle space available to house surplus DEF. Such applications (*e.g.,* a garbage truck, concrete mixer, beverage truck, or airport refueler) will also be refueled daily at central locations. At approximately 0.134 ft^3 per gallon, any extra DEF would displace significant space available to vehicle components and subsystems on both the vocational trucks at the 1:1 refill interval as well as the 2:1 and 3:1 vehicles.

After reviewing this data and information, EPA believes that longer refill intervals than those noted above would require larger and heavier DEF tanks, and the design and engineering work performed by manufacturers thus far indicate that the recommended DEF refill intervals noted above approximate the maximum feasible maintenance intervals associated with reasonable DEF tank sizes. The maintenance intervals recommended ensure that the functions and operational efficiency of such vehicles are not overly compromised. Based on this information we believe the intervals noted above are warranted.

Therefore, EPA finds it appropriate to approve the DEF refill intervals as requested by Volvo, Cummins, and for all heavy-duty engine manufacturers that are represented by EMA. For any manufacturers of heavy-duty engines that are not members of EMA that introduce heavy-duty engines with SCR technology, such manufacturers would need to request this schedule separately. EPA expects it would grant a similar maintenance schedule based on the fact that SCR systems run in a similar manner that would similarly implicate the maintenance interval issues discussed above. In addition, to make use of the intervals noted above, manufacturers must indicate their intention in the applications for certification, including how the above requirements will be met.

The Agency has limited this approval to model years 2009 to 2011 due to the expectation that SCR-related technologies and the urea infrastructure will continue to develop and mature, and EPA plans to revisit this category of vehicles to determine appropriate future intervals. Should manufacturers continue to believe that the identified interval or other intervals are technologically necessary or otherwise appropriate after the 2011 model year, we expect them to take this up with the Agency in a timely manner.

EPA believes it important to note that while not a specific criteria under paragraph (b)(7) of the regulations, there are a number of factors helping to provide confidence that the DEF refill maintenance intervals noted above are likely to be properly performed. First, because DEF refills are considered ''critical emission-related maintenance,'' manufacturers are ''required to show the reasonable likelihood of such maintenance being performed in use.'' (*See* §§ 86.1834(b)(6)(ii) and 86.094–25(6)(ii)). A number of means are available to make this showing, including a clearly displayed visible signal system approved by the Administrator, or data is presented which establishes for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical driving.

As discussed in EPA's Dear Manufacturer Letter of March 27, 2007 (''Certification Procedure for Light-Duty and Heavy-Duty Diesel Vehicles and Heavy-Duty Diesel Engines Using Selective Catalyst Reduction (SCR) Technologies'' reference number CISD–07–07 (LDV/LDT/MDPV/HDV/HDE), an SCR system utilizing a reducing agent that needs to be periodically replenished would meet the definition set forth in §§ 86.094–22(e)(1) and 86.1833–01(a)(1) and could be considered an adjustable parameter by the Agency. The regulations establish the requirements for determining the physically adjustable ranges of parameters, and EPA issued non-binding guidance in the March 27, 2007 Dear Manufacturer Letter concerning the determination under the regulations of whether operation without DEF is within the scope of such range for the particular engine. SCR design and manufacturer-submitted information in that context can be used to assure that the DEF levels remain at proper ranges during the operation of the engine. EPA plans to continue to work with manufacturers, based on their individual design plans, during the certification process to ensure that the adjustable parameter and allowable maintenance regulatory provisions are met.

Dated: November 3, 2009.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. E9–26924 Filed 11–6–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTON AGENCY

[EPA–HQ–OW–2009–0761; FRL–8978–8]

Executive Order 13508 Chesapeake Bay Protection and Restoration Section 203 Draft Strategy and Section 202 Federal Agency Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and Request for Public Comments.

SUMMARY: This notice announces the availability of a draft strategy for restoration and protection of the Chesapeake Bay and requests public comment. The document was prepared pursuant to Executive Order (E.O.) 13508 of May 12, 2009, Chesapeake Bay Protection and Restoration. This E.O. requires that the draft strategy be published for public review and comments.

DATES: Comments on the draft strategy must be submitted on or before January 8, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0761, by one of the following methods:

- *http://www.regulations.gov:* After entering the docket for this action, click on the draft strategy document to make comment. Once you arrive at the page for the specific document on which you wish to comment, click the ''Submit a Comment'' button at the top right of the Web page, then follow the online instructions.
- *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 3340, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m.), and special arrangements should be made for deliveries of boxed information by contacting the Docket Center at 202–566–1744.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2009–0761. This Notice is not open for public comment, but, the Section 203 draft strategy document is available for comment on *http://www.regulations.gov.* The revised Section 202 Federal agency reports will be available later in November. Additional information about the docket is contained below.

FOR FURTHER INFORMATION CONTACT: Marguerite Duffy, USEPA, Region 3, Chesapeake Bay Program Office, Annapolis City Marina, 410 Severn Avenue, Suite 109 (3CB10), Annapolis, MD 21403; telephone number: (410)267–5764; fax number (410) 267–5777; e-mail: *duffy.marguerite@epa.gov*.

SUPPLEMENTARY INFORMATION:

Why Were These Documents Prepared?

Executive Order 13508, Chesapeake Bay Protection and Restoration, dated May 12, 2009 (74 FR 23099, May 15, 2009), requires a Federal Leadership Committee composed of seven Federal agencies to prepare and publish a set of reports and a draft strategy for public review and comment within 180 days of the date of the order. The deadline for publication of the draft strategy is November 9, 2009. The Federal agency draft reports required by E.O. 13508 Sections 202(a) through (g) were submitted to the Federal Leadership Committee for the Chesapeake Bay on September 9, 2009 and released to the public on September 10, 2009. The Federal Leadership Committee for the Chesapeake Bay has considered the draft reports pursuant to the order, and has prepared a draft coordinated strategy to restore the Bay, the availability of which is being announced through this notice. The September 9, 2009, draft reports were reviewed by the Federal Leadership Committee for the Chesapeake Bay, in consultation with relevant State agencies. The revised Section 202 reports reflect consideration of the comments received during State consultation and preliminary public input. The reports will be available later in November for comment. During the next six months, review and incorporation of comments will continue and will be incorporated as appropriate.

How Can I Access the Docket and/or Submit Comments?

Docket: EPA has established a public docket for this Notice under Docket ID No. EPA–HQ–OW–2009–0761. The E.O. Section 203 draft strategy document is available in the docket at *http://www.regulations.gov*, as well as at *http://executiveorder.chesapeakebay.net*. The revised Section 202 reports will be available later in November. Assistance and tips for accessing the docket can be found at *http://executiveorder.chesapeakebay.net*. The seven Section 202 reports as well as the draft Section 203 strategy will be included as separate documents within the same docket number EPA–HQ–OW–2009–0761. Comments via e-mail are not being accepted. Instead, comments will be accepted through *http://www.regulations.gov* and by mail. If you are commenting on the Section 203 draft strategy, submit comments to this specific document within the docket and identify the page number(s) at which each comment is directed. All comments received, including any personal information provided, will be included in the public docket without change and will be made available online at *http://www.regulations.gov,* unless the comment includes information claimed to be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov.* It is recommended 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 your comment cannot be read due to technical difficulties and we are unable to contact you for clarification, we will not 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 the public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. Publicly available docket materials are available electronically either at *http://www.regulations.gov* as well as at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The telephone number for this docket is 202–566–2426. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Certain material, such as copyrighted materials, will be publicly available only in hard copy at the Docket Center.

Why Is EPA Posting These Reports and Draft Strategy for Public Comment?

Executive Order 13508 requires the Federal Leadership Committee for the Chesapeake Bay to prepare and publish a set of reports and a coordinated strategy for protecting and restoring the Chesapeake Bay. As required by E.O. 13508 Section 202, lead agencies prepared reports focusing on:

(a) Defining the next generation of tools and actions to restore water quality in the Chesapeake Bay and describing the changes to be made to regulations, programs, and policies to implement these actions;

(b) Targeting resources to better protect the Chesapeake Bay and its tributary waters;

(c) Strengthening storm water management practices at Federal facilities and on Federal lands within the Chesapeake Bay watershed and developing storm water best practices guidance;

(d) Assessing the impacts of a changing climate on the Chesapeake Bay and developing a strategy for adapting natural resources programs and public infrastructure to the impacts of a changing climate on water quality and living resources of the Chesapeake Bay watershed;

(e) Expanding public access to waters and open spaces of the Chesapeake Bay and its tributaries from Federal lands and conserving landscapes and ecosystems of the Chesapeake Bay watershed;

(f) Strengthening scientific support for decision making to restore the Chesapeake Bay and watershed, including expanded environmental research; and

(g) Developing focused and coordinated habitat and research activities that protect and restore living resources and water quality of the Chesapeake Bay and its watershed. E.O. 13508 Section 203 requires the Federal Leadership Committee for the Chesapeake Bay to prepare and publish a strategy for coordinated implementation of existing programs and projects to guide efforts to protect and restore the Chesapeake Bay. The strategy should to the extent permitted by law:

(a) Define environmental goals for the Chesapeake Bay and describe milestones for making progress toward attainment of these goals;

(b) Identify key measureable indicators of environmental condition and changes that are critical to effective Federal leadership;

(c) Describe the specific programs and strategies to be implemented, including the programs and strategies described in draft reports developed under Section 202 of the order;

(d) Identify the mechanisms that will assure that governmental and other activities, including data collection and distribution, are coordinated and effective, relying on existing mechanisms where appropriate; and

(e) Describe a process for the implementation of adaptive management principles, including a periodic evaluation of protection and restoration.

Acknowledging the strong public interest in the future of the Chesapeake Bay and the actions being taken to improve conditions in the Bay and its watershed, the Federal Leadership Committee for the Chesapeake Bay looks forward to receiving comments on these documents.

What Are the Next Steps in the Process for Collecting Public Comment?

The agencies will review public comments on the draft strategy and agency reports. The comments will be taken into consideration as the Federal Leadership Committee for the Chesapeake Bay develops the final Section 203 strategy. A response to comments document will be released at the same time as the final E.O. 13508 Section 203 strategy with anticipated release by May 12, 2010. The Federal agencies plan to hold a series of stakeholder meetings throughout the Chesapeake Bay watershed to discuss the draft strategy. The details of these meetings will be announced at: *http://executiveorder.chesapeakebay.net*.

Dated: November 4, 2009.

Peter S. Silva,

Assistant Administrator, Office of Water.

[FR Doc. E9–26923 Filed 11–6–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8978–9]

National Drinking Water Advisory Council's Climate Ready Water Utilities Working Group Meeting Announcement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is announcing the first teleconference meeting of the Climate Ready Water Utilities (CRWU) Working Group of the National Drinking Water Advisory Council (NDWAC). The purpose of this conference call is to provide a forum for the CRWU Working Group members to introduce themselves, to discuss the ground rules and standard operating procedures, and to develop an estimated time frame and approach to complete the Working Group charge. Any interested person or organization may attend or dial into the conference call (see the **FOR FURTHER INFORMATION CONTACT** section and the **SUPPLEMENTARY INFORMATION** section of this notice for more information).

DATES: The first CRWU Working Group conference call will take place from 3 p.m. to 5:30 p.m., Eastern Standard Time, on November 23, 2009.

FOR FURTHER INFORMATION CONTACT: Interested participants from the public should contact Lauren Wisniewski, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Water Security Division (Mail Code 4608T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please contact Lauren Wisniewski at *wisniewski.lauren@epa.gov* or call 202–564–2918 to register and receive pertinent details such as the telephone number and extension to participate in the conference call.

SUPPLEMENTARY INFORMATION:

Public Participation: The CRWU Working Group encourages public participation and a limited number of phone lines have been reserved for the public. The Designated Federal Officer (DFO) will provide available teleconferencing lines on a first-come, first-serve basis. To ensure adequate time for public involvement, oral statements will be limited to two minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Any person who wishes to file a written statement can do so before or after the CRWU Working Group meeting. Written statements received prior to the meeting will be distributed to all members of the Working Group before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the CRWU Working Group members for their information. Any person needing special accommodations for this teleconference should contact the DFO, at the number or e-mail listed under the **FOR FURTHER INFORMATION CONTACT** section, at least five business days before the meeting so that appropriate arrangements can be made.

Background: The Agency's *National Water Program Strategy: Response to Climate Change* (2008) document identified the need to provide drinking water and wastewater utilities with easy-to-use resources to assess the risk associated with climate change and to identify potential adaptation strategies. NDWAC, established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*), provides practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act. On May 28, 2009, the NDWAC voted on and approved the formation of the CRWU

Working Group. EPA anticipates that the Working Group will have five face-to-face meetings over the course of the next year in addition to conference calls and/or video conferencing on an as needed basis. After the Working Group completes its charge, it will make recommendations to the full NDWAC. The full NDWAC will, in turn, make appropriate recommendations to the EPA.

Working Group Charge: The charge for the CRWU Working Group is to evaluate the concept of ''Climate Ready Water Utilities'' and provide recommendations to the full NDWAC on the development of an effective program for drinking water and wastewater utilities, including recommendations to: (1) Define and develop a baseline understanding of how to use available information to develop climate change adaptation and mitigation strategies, including ways to integrate this information into existing complementary programs such as the Effective Utility Management and Climate Ready Estuaries Program; (2) identify climate change-related tools, training, and products that address short-term and long-term needs of water and wastewater utility managers, decision makers, and engineers, including ways to integrate these tools and training into existing programs; and (3) incorporate mechanisms to provide recognition or incentives that facilitate broad adoption of climate change adaptation and mitigation strategies by the water sector into existing EPA Office of Water recognition and awards programs or new recognition programs.

Dated: November 3, 2009.

Nanci E. Gelb,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. E9–26962 Filed 11–6–09; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting Notice

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 12, 2009, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- October 15, 2009.

B. New Business

- *Proposed Bookletter—Rural Housing Mortgage-Backed Securities.*

C. Reports

- Agricultural Credit Markets.
- Office of Management Services Quarterly Report.

Dated: November 4, 2009.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E9–26927 Filed 11–5–09; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

11/03/2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments on January 8, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), 445 12th Street, SW, Room 1–C823, Washington, DC 20554. To submit your comments by e–mail send then to: PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0562.

Title: Section 76.916, Petition for Recertification.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities; State, local or tribal government.

Number of Respondents and Responses: 10 respondents; 15responses.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 4(i) and 623 of the Communications Act of 1934, as amended.

Total Annual Burden: 150 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.916 provides that a franchising authority wishing to assume jurisdiction to regulate basic cable service and

associated rates after its request for certification has been denied or revoked, may file a petition for recertification with the Commission. The petition must be served on the cable operator and on any interested party that participated in the proceeding denying or revoking the original certification. Oppositions to petitions may be filed within 15 days after the petition is filed. Replies may be filed within seven days of filing of oppositions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. E9–26827 Filed 11–6–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Renewal of a Currently Approved Collection; Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection. Specifically, the FDIC is soliciting comment concerning its information collection titled, Basel II Capital: Disclosures and Recordkeeping, and bearing OMB Control No. 3064–0153. The FDIC also gives notice that it has sent the information collection to OMB for review.

DATES: Comments must be submitted on or before December 9, 2009.

ADDRESSES: Interested parties are invited to submit written comments. All comments should refer to the name and number of the collection. Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@FDIC.gov.* Include ''Basel II Capital: Disclosures and Recordkeeping, 3064–0154,'' in the subject line of the message.
- *Mail:* Leneta G. Gregorie, Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/notices.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the FDIC by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Leneta G. Gregorie, Counsel, (202) 898–3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: *Proposal to extend for three years without revision the following currently approved collection of information:*

Title: Basel II Capital: Disclosures and Recordkeeping.

OMB Number: 3064–0153.

Frequency of Response: Annually.

Affected Public: Insured state nonmember banks, insured state branches of foreign banks, and certain subsidiaries of those entities.

Estimated Number of Respondents: 19.

Estimated Time per Response: Written implementation plan—330 hours; documentation—19 hours; systems maintenance—27.89 hours; prior written approvals—16.84 hours; control, oversight and verification of systems—11.05 hours; disclosures—5.79 hours.

Estimated Total Annual Burden: 7,801 hours.

General Description of Report: This information collections is mandatory: 12 U.S.C. 1831(o).

Abstract: On December 7, 2007, the FDIC, jointly with the Board of Governors of the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, issued the joint final rule entitled Risk-Based Capital Standards: Advanced Capital Adequacy Framework (final rule) implementing a new risk-based regulatory capital framework for institutions in the United States. The final rule requires certain large or internationally active banks and bank holding companies (BHCs) to (1) Adopt a written implementation plan, (2) update that plan for any mergers, (3) obtain prior written approvals for the use of certain approaches for determining risk-weighted assets, and (4) make certain public disclosures regarding their capital ratios, their components, and information on implicit support provided to a securitization. The paperwork burden associated with these requirements has been approved under OMB Control No. 3064–0153.

Request for Comment

Comments are invited on:

a. Whether the information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

b. The accuracy of the agency's estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and,

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments submitted in response to this notice will become a matter of public record.

Dated at Washington, DC, this 3rd day of November, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–26863 Filed 11–6–09; 8:45 am]

BILLING CODE 6714–01–P; 4810–33–P; 6210–01–P; 6220–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 23, 2009.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Thomas M. Annesley, Norman, Oklahoma, as trustee of the William R. Oliver GST Exempt Trust and the Jackson T. Oliver GST Exempt Trust, to retain control of Valliance Financial Corporation, and thereby indirectly retain control of Valliance Bank, both in Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, November 3, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–26840 Filed 11–6–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Assistant Secretary for Administration and Management and Office of the Assistant Secretary for Resources and Technology; Statement of Organization, Functions, and Delegations of Authority

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) is reorganizing a portion of two offices, the Office of the Assistant Secretary for Resources and Technology (ASRT) and the Office of the Assistant Secretary for Administration and Management (ASAM), both of which are located within the Office of the Secretary (OS). The reorganization is designed to increase the efficiency and effectiveness of these two offices by consolidating the resource-related functions, including budget, grants, acquisition, finance, and the American Recovery and Reinvestment Act (Recovery Act) coordination, under ASRT and the administrative functions under ASAM. The titles of the Assistant Secretary for Resources and Technology (ASRT) and the Assistant Secretary for Administration and Management (ASAM) will also be changed to the Assistant Secretary for Financial Resources (ASFR) and Assistant Secretary for Administration (ASA), respectively. This reorganization also will transfer support for the Office of Small & Disadvantaged Business Utilization (OSDBU) from ASAM to ASRT, while maintaining the Office's same direct-line reporting structure to the Deputy Secretary. Finally, this reorganization will transfer direct-line reporting of the Office of the Chief Information Office from ASRT to the Deputy Secretary while moving day-to-day support for OCIO from ASRT to ASA.

FOR FURTHER INFORMATION CONTACT: E.J. Holland, Jr., Assistant Secretary for Administration, 200 Independence Ave., SW., Washington, DC 20201, (202) 690–7431 or Richard Turman, Acting Assistant Secretary for Financial Resources, 200 Independence Ave., SW., Washington, DC 20201, (202) 690–6061.

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended at Chapter AM, ''Office of the Assistant Secretary for Resources and Technology (ASRT),'' as last amended at 74 FR 18238–39, dated April 21, 2009, 73 FR 31486, dated June 2, 2008, 71 FR 38884–88, dated July 10, 2006, and 66 FR 55666, dated November 2, 2001, and at Chapter AJ, ''Office of the Assistant Secretary for Administration and Management (ASAM),'' as last amended at 74 FR 297–301, dated January 5, 2009, at 72 FR 40155–40157, dated July 23, 2007, and at 72 FR 2282–2283, dated January 18, 2007.

The changes are as follows:

1. Under Chapter AM, ''Office of the Assistant Secretary for Resources and Technology,'' make the following changes:

A. Retitle all references to the ''Assistant Secretary for Resources and Technology (ASRT)'' as the ''Assistant Secretary for Financial Resources (ASFR).''

B. Under Section AM.00 Mission, delete in its entirety and replace with the following:

Section AM.00 Mission. The mission of the Office of Financial Resources (OFR) is to advise the Secretary on all aspects of budget, grants, financial management and acquisition and to provide for the direction of these activities throughout HHS. ASFR also coordinates HHS' implementation and reporting regarding the American Recovery and Reinvestment Act (Recovery Act).

C. Under Section AM.10 Organization, delete in its entirety and replace with the following:

Section AM.10 Organization. The Office of Financial Resources is headed by the Assistant Secretary for Financial Resources (ASFR), who has several formal and informal roles, including Chief Financial Officer (CFO), Chief Acquisition Officer, HHS audit follow-up official, and lead official for budget and grants. The Assistant Secretary also is a close advisor to the Secretary on policy issues. ASFR accomplishes its work through its component offices:

- Immediate Office of the Assistant Secretary (AM).
- Office of Budget (AML).
- Office of Finance (AMS).
- Office of Grants and Acquisition Policy and Accountability (AMT).
- Office of Recovery Act Coordination (AMV).

D. Under Section AM.20 Functions, delete ''Chapter AMM, Office of the Chief Information Officer,'' in its entirety.

E. Under Section AM.20 Functions, delete ''Chapter AMT, Office of Grants (AMT)'' in its entirety and replace with the following:

Chapter AMT, Office of Grants and Acquisition Policy and Accountability (AMT).

Section AMT.00 Mission. The Office of Grants and Acquisition Policy and Accountability (OGAPA) provides Department-wide leadership and management in the areas of grants and acquisition management through policy development, data systems operations and analysis, performance measurement, oversight and workforce training, development, and certification. OGAPA fosters collaboration, innovation, and accountability in the administration and management of the grants and acquisition functions throughout the Department. In addition to facilitating Departmental implementation of and compliance with existing grants and acquisition laws and regulations, OGAPA provides Departmental and government-wide leadership on implementation of the Federal Financial Accountability and Transparency Act (FFATA) for grant and acquisition activities. OGAPA is the organizational location for Grants.gov, which provides a Government-wide electronic portal for citizens to ''Find'' and ''Apply'' for Federal grant opportunities. OGAPA represents the Department in dealing with the Office of Management and Budget (OMB), U.S. Government Accountability Office (GAO), other Federal agencies, and Congress in the area of grants (to include mandatory and discretionary grants administration and electronic grants systems) and acquisition management.

Section AMT.10 Organization. OGAPA is headed by a Deputy Assistant Secretary for Grants and Acquisition Policy and

Accountability who reports to the Assistant Secretary for Financial Resources. OGAPA consists of the following components:

- Immediate Office of Grants and Acquisition Policy and Accountability (AMT).
- Division of Grants (AMT1).
  - Office of Grants Policy, Oversight & Evaluation (AMT11).
  - Office of Grants Systems & Modernizations (AMT12).
- Division of Acquisition (AMT2).
  - Office of Acquisition Policy (AMT21).
  - Office of Acquisition Program Support (AMT22).
- Office of Small & Disadvantaged Business Utilization (AMT3).

Section AMT.20 Functions.

1. *Immediate Office of Grants and Acquisition Policy and Accountability (AMT).* The Immediate Office of Grants and Acquisition Policy and Accountability consists of the Deputy Assistant Secretary and support staff who assist in the management and administration of the Office's functions.

2. *Division of Grants (AMT1).* The Division of Grants is headed by an Associate Deputy Assistant Secretary who serves as the Division Director and provides leadership, policy, guidance, oversight, and coordination of HHS grants management practices and its supporting grants management systems. The Division supports government-wide grants management initiatives, as well as outreach to grantors and grantees and interface with HHS agencies, OMB, the Federal Chief Information Officers (CIO) Council, the Grants Policy Council and Grants Executive Board, and HHS leadership on the Grants.gov systems and Tracking Accountability in Government Grants Systems (TAGGS), as appropriate. The Division also provides technical assistance to the Operating Divisions (OPDIVs) and evaluates effectiveness of the Department's grant programs, including the development of performance standards and grant processing systems. The Division of Grants (AMT1) consists of the following components:

- Office of Grants Policy, Oversight & Evaluation (AMT11).
- Office of Grants Systems & Modernizations (AMT12).

a. *Office of Grants Policy, Oversight & Evaluation (AMT11).* The Office of Grants Policy, Oversight and Evaluation (OGPOE) is headed by a Director. The Office formulates, oversees, and evaluates Department-wide implementation of grants policies governing the award and management of grants throughout HHS, in support of existing laws, regulations, and OMB Circulars. Additionally, OGPOE: (a) Develops and implements HHS grants management regulations and publishes new policies and modifications in the HHS Grants Policy Directives (GPDs), including all directives necessary to implement new intergovernmental and HHS policies; (b) Represents the Department and serves as its liaison in interagency grants policy and management activities; maintains working relationships with OMB, U.S. General Services Administration (GSA), GAO and other Federal agencies to coordinate and assist in the development of proposed legislation and policy; and (c) Develops strategy and related training opportunities to enhance the career development of grants management professionals both within the Department and Government-wide so as to facilitate the hiring and retention of a well qualified and fully certified workforce of grants management professionals.

b. *Office of Grants Systems & Modernizations (AMT12).* The Office of Grants Systems & Modernization (OGSM) is headed by a Director. The organization consists of the following components:

- Grants.gov Program Management Office (AMT121).
- Grants Management Systems Branch (AMT122).

i. *Grants.gov Program Management Office (AMT121).* The Grants.gov Program Management Office (GPMO) is headed by a Program Manager and provides leadership to Federal and non-Federal members of the Grant Community as the system manager of Grants.gov—the government-wide central portal where citizens can find and apply for Federal grants. The GPMO manages the full life cycle of Grants.gov system operations and maintenance including short-term and long-term enhancement activities to ensure users have a reliable system to find and apply for Federal grants. In addition, the GPMO: (a) Collects and evaluates user requirements and as appropriate integrates these adaptations into system change requests which are planned and executed according to government-wide capital planning and investment control practices; (b) Leads a government-wide collaborative effort to design, build and implement the ''next generation'' of Grants.gov; (c) Manages and collects funds to support the full lifecycle of Grants.gov system operations, maintenance and enhancement activities; (d) Serves as a liaison to ensure coordination with OMB, Federal CIO Council, Grants Policy Committee, Grants Executive Board and HHS leadership and other oversight organizations on the government-wide electronic grants initiative; (e) Manages the clearance and revision of government-wide grant forms and data elements used on Grants.gov; and (f) Conducts and coordinates outreach and training for grants management professionals, grantees and grantors on the use and capabilities of Grants.gov.

ii. *Grants Management Systems (AMT122).* The Grants Management Systems Branch (GMSB) is headed by a Branch Chief. This Branch plans, directs and coordinates the activities of the Division of Grants with respect to Departmental implementation of all electronic grants initiatives, such as: TAGGS, Government-wide Grants Management Line of Business, as well as management of select Grants Internet and Intranet sites. GMSB represents the Department or the Division of Grants on matters of electronic assistance administration policy in dealing with recipients, OMB, other Federal agencies, and the public in general and leads Departmental coordination of grants system activities in support of the Federal Financial Accountability and Transparency Act including system interfaces with USASpending.gov.

3. *Division of Acquisition (AMT2).* The Division of Acquisition is headed by an Associate Deputy Assistant Secretary, who serves as the Division Director, and provides management direction and leadership, policy, guidance, and supervision to constituent organizations, and coordinates long and short-range planning. The Division also provides technical assistance to the Department's OPDIVs, evaluates effectiveness of the acquisition programs and processes, develops pertinent HHS-wide performance standards, maintains Departmental contract information, and conducts special Departmental initiatives. It also serves as the focal point for cross-cutting Freedom of Information Act (FOIA) requests and audits regarding acquisition. The Division Director serves as the Department's Senior Procurement Executive and leads the Department's Executive Committee for Acquisition. The Division of Acquisition (AMT2) consists of the following components:

- Office of Acquisition Policy (AMT21).
- Office of Acquisition Program Support (AMT22).

a. *Office of Acquisition Policy (AMT21).* The Office of Acquisition Policy (OAP) is headed by a Director. The Office provides leadership in the area of acquisition through policy development and implementation and workforce planning, development, and training. The Office is responsible for formulating Department-wide acquisition policies governing acquisition activities, publishing and maintaining the HHS Acquisition Regulation (HHSAR), participating in government-wide acquisition rule-making through the Civilian Agency Acquisition Council, providing advice and technical assistance on matters related to HHS acquisition programs, managing workforce development issues for the Department's acquisition workforce, managing the Departmental Contract Information System; and monitoring the adoption of acquisition policies by the Department's OPDIVs and Staff Divisions (STAFFDIVs) to ensure consistent policy interpretation.

b. *Office of Acquisition Program Support (AMT22).* The Office of Acquisition Program Support (OAPS) is headed by a Director and provides advice, oversight and support regarding operational acquisition and business practices and issues. This Office conducts procurement management reviews, promotes consistent and standardized business practices, and facilitates and improves the acquisition system by: (a) Developing innovative processes and tools; (b) Acquiring, adopting, tailoring and sharing best practices; (c) Leading the Department's Strategic Sourcing Program and the acquisition aspects of the environmental program; (d) Providing expert consultation services; and (e) Managing the Department's Government Purchase Card Program. The Office serves as the Department's liaison relating to acquisition issues for OMB, Congress, GAO and the Office of the Inspector General (OIG) when requested.

4. *Office of Small & Disadvantaged Business Utilization (AMT3).* The Office of Small & Disadvantaged Business Utilization

(OSDBU) fosters the use of small business as Federal contractors pursuant to Public Law 95–507 and is also referred to within HHS as the Office of Small Business Programs (OSBP). OSDBU manages the development and implementation of appropriate outreach programs aimed at heightening the awareness of the small business community to the contracting opportunities available within HHS. OSDBU issues policy and guidance on all small business programs for HHS. The Director of OSDBU reports directly to the Deputy Secretary and is administratively supported by OGAPA. OSDBU: (1) Provides leadership, policy, guidance and supervision, as well as coordinating short- and long-range strategic planning for the Secretary and the Deputy Secretary to assure that small business vendors have a fair opportunity to compete for and receive business with the Department; (2) Has responsibility within the Department for policy, plans, and oversight to execute the functions under Sections 8 & 15 of the Small Business Act; (3) Provides leadership to the development and assessment of the Department's programs and policies to develop a unified small business voice; (4) Publishes and maintains the HHS Small Business Program Policy Manual (SBPPM); (5) Collaborates with the acquisition and program offices of HHS to ensure compliance with the Small Business Act, the Federal Acquisition Regulation (FAR) and the HHSAR; (6) Prepares documentation and reports to the Executive Office of the President, Congress, OMB, the Small Business Administration, and other agencies, as required; (7) Provides input for coordinated Department positions on proposed legislation and Government regulations on matters affecting cognizant socioeconomic programs and maintains liaison with Congress through established Department channels; (8) Is responsible for the Departmental review and evaluation of planned procurement by program and procurement offices to ensure that Small Business Programs are given thorough consideration throughout the decision-making process; and (9) Builds strong relationships with internal, as well as, external stakeholders and partners of HHS.

2. Under Chapter AJ, ''Office of the Assistant Secretary for Administration and Management,'' make the following changes:

A. Retitle all references to the ''Assistant Secretary for Administration and Management (ASAM)'' as the ''Assistant Secretary for Administration (ASA)''

B. Under Section AJ.00 Mission, delete in its entirety and replace with the following:

Section AJ.00 Mission. The Office of Assistant Secretary for Administration (OASA) performs for the Secretary the administrative functions of the Department. Manages the human resources, equal employment opportunity, information resources management, logistics and travel policies and programs, and general administrative activities of the Department and other administrative duties as assigned from time to time. Provides leadership and oversight direction to the activities of the Program Support Center.

C. Under Section AJ.10 Organization, delete in its entirety and replace with the following:

Section AJ.10 Organization. The Office of the Assistant Secretary for Administration is under the direction of the Assistant Secretary for Administration, who reports to the Secretary, and consists of the following components:

- Immediate Office (AJ).
- Office of Human Resources (AJA).
- OS Executive Office (AJC).
- Office for Facilities Management and Policy (AJE).
- Office of the Chief Information Officer (AJG).
- Office of Diversity Management & Equal Employment Opportunity (AJI).
- Office of Business Transformation (AJJ).
- Program Support Center (P).

D. Under Section AJ.20 Functions, delete ''Office of Acquisition Management and Policy (AJG)'' in its entirety and replace with the following:

Office of the Chief Information Officer (AJG). Section AJG.00 Mission. The Office of the Chief Information Officer (OCIO) advises the Secretary and the ASA on matters pertaining to the use of information and related technologies to accomplish Departmental goals and program objectives. The mission of the Office is to establish and provide: assistance and guidance on the use of technology-supported business process reengineering; investment analysis; performance measurement; strategic development and application of information systems and infrastructure; policies to provide improved management of information resources and technology; and better, more efficient service to our clients and employees.

Section AJG.10 Organization. The Office of the Chief Information Officer (OCIO) is headed by the Deputy Assistant Secretary for Information Technology (DASIT)/HHS Chief Information Officer (CIO), who reports to the Deputy Secretary. The HHS CIO serves as the primary IT leader for the Department. The OCIO consists of the following components:

- Immediate Office (AJG).
- Office of Resources Management (AJG1).
- Office of Enterprise Architecture (AJG2).
- Office of Enterprise Project Management (AJG3).
- Office of Information Technology Security (AJG4).

Section AJG.20 Functions.

1. *The Immediate Office of the Chief Information Officer (AJG).* The Immediate Office of the Chief Information Officer (OCIO) supports the DASIT/CIO and also provides leadership in OS Information Technology (IT) issues, HHS IT architecture, HHS IT security, and the use of technology in HHS.

2. *Office of Resources Management (AJG1).* The Office of Resources Management (ORM) is headed by the Director, Office of Resources Management and is responsible for OCIO Business Operations. The Office advises the CIO and OCIO managers on matters relating to OCIO operations, HHS information collection, HHS policy development and interpretation, development of the OCIO budget and HHS IT workforce development.

3. *Office of Enterprise Architecture (AJG2).* The Office of Enterprise Architecture (OEA) is headed by the Director, Office of Enterprise Architecture who is also the HHS Chief Enterprise Architect and supports all planning and enterprise programs that fall under the OCIO.

4. *Office of Enterprise Project Management (AJG3).* The Office of Enterprise Project Management (OEPM) is headed by the Director, Office of Enterprise Project Management who is the senior technical advisor to the HHS CIO on the implementation of information technology, and in that role works closely in support of the HHS Chief Technology Officer. The Director, OEPM, supports the design, development, configuration, integration and implementation of all HHS enterprise information technology projects that fall under the Office of the Chief Information Officer.

5. *Office of Information Technology Security (AJG4).* The Office of Information Technology Security (OITS) is headed by the Director, (OITS), who is also the HHS Chief Information Security Officer (CISO), who manages the HHS Security Program. The Office provides management leadership in IT security policy and guidance, expert advice and collaboration among the OPDIVs and the STAFFDIVs in developing, promoting and maintaining IT security measures to adequately and cost effectively protect and ensure the confidentiality, integrity and timely availability of all data and information in the custody of the Department, as well as of the information systems required to meet the Department's current and future business needs.

E. Under Section AJ.20 Functions, delete ''Office of Small and Disadvantaged Business Utilization (AJH)'' in its entirety.

F. Under Section AJ.20 Functions, ''Office of Business Transformation (AJJ),'' delete ''Section AJJ.00 Mission'' in its entirety and replace with the following:

Section AJJ.00 Mission. The Office of Business Transformation (OBT) provides results-oriented strategic and analytical support for key management initiatives and coordinates the business mechanisms necessary to account for the performance of these initiatives and other objectives as deemed appropriate. OBT also oversees the implementation of commercial services activities Department-wide, as a tool to generate savings and improve efficiencies, and provides technical assistance to the OPDIVs and evaluates effectiveness of their business-centric programs, including the development of performance standards. OBT also will be responsible for integrating the work performed by ASA in the areas of business process reengineering, core business mission activities, responsibility and investment matters as

determined by ASA. These include travel and logistics policies and programs. As part of its business process reengineering services, OBT will conduct the review process for reorganization and delegation of authority proposals for the Office of the Secretary (OS) that require the Secretary's or designees' signature.

G. Under Section AJ.20 Functions, ''Office of Business Transformation (AJJ),'' delete ''Section AJJ.10 Organization'' in its entirety and replace with the following:

Section AJJ.10 Organization. The Office of Business Transformation (OBT), headed by a Deputy Assistant Secretary who reports directly to the Assistant Secretary for Administration consists of the following components:

○ Division of Strategic Initiatives (AJJ1).
○ Division of Commercial Services Management (AJJ2).
○ Division of Travel Policy and Programs (AJJ3).
○ Division of Logistics Policy and Programs (AJJ4).
○ Division of Organizational Reengineering (AJJ5).

H. Under Section AJ.20 Functions, ''Office of Business Transformation (AJJ),'' ''Section AJJ.20 Functions,'' immediately after ''2. Division of Commercial Services Management (AJJ2)'' insert the following:

3. *Division of Travel Policy and Programs (AJJ3).* The Division of Travel Policy and Programs is headed by a Director and provides leadership in the area of travel through HHS policy development and oversight through coordination with OMB, the General Services Administration (GSA), and the Office of Government Ethics regarding government-wide travel program requirements. The Division provides quality guidance, advice and assistance, information, training, and best practices for managing HHS travel.

4. *Division of Logistics Policy and Programs (AJJ4).* The Division of Logistics Policy and Programs is headed by a Director and provides leadership in the area of logistics through HHS policy development and oversight and through coordination with OMB, GSA, the Department of Energy (DOE), and other Federal agencies regarding government-wide logistics requirements. This Division is dedicated to improving HHS' management of assets, personal property, equipment, inventory, fleet, transportation, and investments for logistics management information systems.

5. *Division of Organizational Reengineering (AJJ5).* The Division of Organizational Reengineering is headed by a Director who administers and oversees the Department's system for review, approval, and documentation of reorganization and delegation of authority proposals.

I. Under Section AJ.20 Functions, ''Office of Diversity Management and Equal Employment Opportunity (AJI),'' delete'' Section AJI.10 Organization'' in its entirety and replace with the following:

Section AJI.10 Organization. The Office of Diversity Management and Equal Employment Opportunity (ODME) is headed by a Director for ODME, who reports directly to the Assistant Secretary for Administration, and consists of the following components:

○ Diversity Management Division (AJI1).
○ Equal Employment Opportunity (EEO) Programs Division (AJI2).
○ Division of EEO Program Evaluation and Policy (AJI3).

J. Under Section AJ.20 Functions, ''Office of Diversity Management and Equal Employment Opportunity (AJI),'' ''Section AJI.20 Functions,'' immediately after ''2. Equal Employment Opportunity (EEO) Programs Division (AJI2)'' insert the following:

3. *Division of EEO Program Evaluation and Policy (AJI3).* The Division of EEO Program Evaluation and Policy (DEPEP): (a) Provides leadership in developing and promoting improved analytical tools and methods for evaluating EEO and workforce diversity data, including strategic planning; (b) Ensures OPDIV EEO Offices are aligned with ASAM and HHS polices and strategic plans; (c) Manages ODME's continuous improvement program, the internal controls process (A–123) for ODME; ODME's key performance indicators; Departmental EEO policy development; and the preparation of the Equal Employment Opportunity Commission (EEOC) Form 462 report; and (d) Prepares the Department's annual Management Directive 715 (MD–715) report to the EEOC and keeps HHS officials apprised of workforce demographics, complaints activity, and barriers to equal employment opportunity and recommending possible solutions as appropriate.

3. *Delegation of Authority.* Pending further redelegation, directives or orders made by the Secretary, ASFR or ASA, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

Dated: November 1, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–26963 Filed 11–6–09; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Evaluation of Adolescent Pregnancy Prevention Approaches—Baseline Data Collection.

OMB No.: 0970–0360.

Description: The Administration for Children and Families (ACE), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity as part of the Evaluation of Adolescent Pregnancy Prevention Approaches (PPA). PPA is being undertaken to expand available evidence on effective ways to prevent teen pregnancy. The evaluation will document and test a range of pregnancy prevention approaches in up to eight program sites. Program impacts will be estimated using a random assignment design, involving random assignment at the school, individual, or other level, depending on the program setting. The findings of the evaluation will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

This proposed information collection activity focuses on collecting baseline data from a self-administered questionnaire which will be used to perform meaningful analysis to determine significant program effects. Through a survey instrument, respondents will be asked to answer carefully selected questions about demographics and risk and protective factors related to teen pregnancy.

Respondents: Study participants, *i.e.* adolescents assigned to a select school or community teen pregnancy prevention program or a control group.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Baseline Instrument	3,600	1	.5	1,800

Estimated Total Annual Burden Hours: 1,800

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 2009.

Seth F. Chamberlain,

Reports Clearance Officer.

[FR Doc. E9–26802 Filed 11–6–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-10–10AE]

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

Malaria Pre-travel Advice: Knowledge and Practices Among US Healthcare Providers Whose Patients Develop Malaria—New—National Center for Zoonotic, Vector-Borne, and Enteric Diseases/Division of Parasitic Diseases/Malaria Branch (NCZVED/DPD/MB), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

In 2007, there were 1505 cases of malaria reported in the US and its territories. Except for one transfusion-related case, all cases in 2007 were imported. Almost all of the imported malaria cases could have been prevented with appropriate malaria prophylactic drug regimens. Achieving appropriate malaria prophylaxis requires knowledge and action by both the traveler and healthcare provider (HCP). There are limited studies on HCP knowledge and practices regarding malaria prophylaxis. We propose an activity to better define the types of HCPs giving pre-travel advice about malaria, their knowledge gaps regarding malaria, and their barriers to appropriate prescription of malaria prophylaxis.

All U.S. travelers with malaria reported in 2010 and their healthcare providers (if one was seen) who provided pre-travel advice will be interviewed by phone. Interviews will take no longer than 15 minutes. Questions to be asked of patients include demographics, knowledge of malaria risks, and use of prophylaxis during their travel. HCPs will be asked about their training, practice type, and knowledge of malaria risk and prevention. Univariate analysis will be done to describe characteristics of HCPs who give inappropriate prescriptions for malaria prophylaxis. Bivariate and multivariate analysis is planned to examine the association between various HCP characteristics and provision of inappropriate (or no) malaria prophylaxis. Findings from this activity will help CDC's malaria branch with the development and targeting of educational materials for HCPs regarding malaria in travelers. Information gathered will also guide content of educational and review articles to be published in journals most often read by target HCPs.

There is no cost to respondents.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Patients ≥18	350	1	0.25	87.5
Parents of patients <18	88	1	0.25	22
Healthcare providers	438	1	0.25	109.5
Total				219

Dated: November 2, 2009.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–26935 Filed 11–6–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Tax Refund Offset Program and Administrative Offset Program (TROP/ADOP).

OMB No.: 0970–0161.

Description: The Tax Refund Offset and Administration Offset Programs collect past-due child support by intercepting certain Federal payments, including Federal tax refunds, of parents who have been ordered to pay child support and who are behind in paying the debt. The program is a cooperative effort among the Department of the Treasury's Financial Management Service (FMS), the Federal Office of Child Support Enforcement (OCSE), and State Child Support Enforcement (CSE) agencies. The Passport Denial program reports non-custodial parents who owe arrears above a threshold to the Department of State (DOS), which will then deny passports to these individuals. On an ongoing basis, CSE agencies submit to OCSE the names, Social Security numbers (SSNs), and the amount(s) of past-due child support of people who are delinquent in making child support payments.

Respondents: State IV–D Agencies

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Input Record	54	52	0.30	842.40
Output Record	54	52	0.46	1,291.68
Payment File	54	52	0.14	379.08
Certification Letter	54	1	0.40	21.60

Estimated Total Annual Burden Hours: 2,534.76

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 3, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–26852 Filed 11–6–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Clinical Trials Reporting Program (CTRP) Database (NCI)

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Clinical Trials Reporting Program (CTRP) Database. *Type of Information Collection Request:* Revision of currently approved collection [OMB No. 0925–0600, expiration date 01/31/2010]. *Need and Use of Information Collection:* The NCI is developing an electronic resource, the NCI Clinical Trials Reporting Program (CTRP) Database, to serve as a single, definitive source of information about all NCI-supported clinical research, thereby enabling the NCI to execute its mission to reduce the burden of cancer and to ensure an optimal return on the nation's investment in cancer clinical research. Information will be submitted by clinical research administrators as designees of clinical investigators who conduct NCI-supported clinical research. Deployment and extension of the CTRP Database, which will allow the NCI to consolidate reporting, aggregate information and reduce redundant submissions, is an infrastructure development project that will be enabled by public funds expended pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (''Recovery Act''). This information collection adheres to The Public Health Service Act, Section 407(a)(4) (codified at 42 USC 285a-2(a)(2)(D)), which authorizes and requires the NCI to collect, analyze and disseminate all data useful in the prevention, diagnosis, and treatment of cancer, including the establishment of an international cancer research data bank to collect, catalog, store, and disseminate insofar as feasible the results of cancer research undertaken in any country for the use of any person

involved in cancer research in any country. *Frequency of Response:* Once per initial trial registration; four amendments per trial annually; and four accrual updates per trial annually. *Affected Public:* Individuals, business and other for-profits, and not-for-profit institutions. *Type of Respondents:* Clinical research administrators on behalf of clinical investigators. The annual reporting burden is estimated at 38,500 hours.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

A.12–1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Survey instrument	Number of respondents	Frequency of response	Average time per response (minutes/hours)	Annual burden hours
Clinical Trials	Initial Registration	5,500	1	120/60	11,000.
	Amendment	5,500	4	60/60	22,000.
	Accrual Updates	5,500	4	15/60	5,500.
Total		16,500			38,500.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact John Speakman, Associate Director for Clinical Trials Products and Programs, Center for Biomedical Informatics and Information Technology, National Cancer Institute, NIH, DHHS, 2115 E. Jefferson Street, Suite 6000, Rockville, MD 20892 or call non-toll-free number 301–451–8786 or e-mail your request, including your address to: *john.speakman@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: October 30, 2009.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E9–26875 Filed 11–6–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0233]

Guidance for Industry: Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Donors of Whole Blood and Blood Components Intended for Transfusion; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Donors of Whole Blood and Blood Components Intended for Transfusion,'' dated November 2009. This guidance is intended for establishments that collect Whole Blood and blood components intended for transfusion. The document provides recommendations for testing of donations of Whole Blood and blood components for West Nile Virus (WNV) using an FDA-licensed donor screening assay. FDA believes that the use of a licensed nucleic acid test (NAT) will reduce the risk of transmission of WNV, and therefore recommends use of a licensed NAT to screen donors of Whole Blood and blood components intended for transfusion. The guidance announced in this notice finalizes the recommendations as to Whole Blood and blood components contained in the draft guidance ''Guidance for Industry: Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Donors of Whole Blood and Blood Components Intended for Transfusion and Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps),'' dated April 2008. The recommendations as to HCT/P donor specimens contained in the draft guidance are not being finalized at this time because FDA believes additional public discussion is warranted.

DATES: Submit electronic or written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Denise Sánchez, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Donors of Whole Blood and Blood Components Intended for Transfusion,'' dated November 2009. The guidance document provides

recommendations for testing donations of Whole Blood and blood components for WNV using an FDA-licensed donor screening assay. The recommendations in section III of the guidance apply to all donations of Whole Blood (as defined in 21 CFR 640.1) and blood components for transfusion.

In the **Federal Register** of April 28, 2008 (73 FR 22958), FDA announced the availability of the draft guidance ''Guidance for Industry: Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Donors of Whole Blood and Blood Components Intended for Transfusion and Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps),'' dated April 2008. The draft guidance provided recommendations for testing donations of Whole Blood and blood components and HCT/P donor specimens for WNV using an FDA-licensed donor screening assay. FDA requested that comments on this draft guidance be submitted within 90 days of publication. The 90-day comment period ended on July 28, 2008. In addition, in the **Federal Register** of July 7, 2008 (73 FR 38460), FDA requested the submission of data from the 2008 WNV season relating to the criteria for converting from minipool NAT (MP–NAT) to individual donation NAT (ID–NAT) by January 31, 2009, and stated that we did not intend to finalize the proposed recommendations on conversion from MP–NAT to ID–NAT until we had obtained the additional data. At this time, there is insufficient data to recommend uniform threshold criteria for switching from MP–NAT screening to ID–NAT screening. Until we have sufficient data to support the development of suitable uniform threshold criteria, we consider it appropriate for each blood establishment to define its own threshold criteria for switching from MP–NAT to ID–NAT screening and for reverting to MP–NAT screening.

Additionally, at this time, FDA is continuing to review public comment on our recommendations for testing HCT/P donor specimens for WNV. We believe additional public discussion is warranted. Therefore, we are not finalizing our recommendations for HCT/Ps in this guidance. We intend to seek additional public input and to issue guidance for testing HCT/P donor specimens for WNV in the future.

FDA received numerous comments on the draft guidance and those comments were considered in finalizing the guidance. A summary of changes follows. The guidance announced in this notice: (1) Finalizes only the recommendations as to testing donations of Whole Blood and blood components intended for transfusion for WNV; (2) allows establishments that collect Whole Blood and blood components intended for transfusion flexibility to define their own threshold criteria for switching from MP–NAT to ID–NAT screening; (3) recommends that establishments that collect Whole Blood and blood components intended for transfusion switch from MP–NAT to ID–NAT screening as soon as feasible with 48 hours of reaching the threshold, instead of 24 hours; (4) recommends that establishments notify a blood donor of his or her deferral and counsel the donor following an ID–NAT reactive donation, rather than after additional testing on the reactive index donation; and (5) removes Table 2 (Recommendations on Additional Testing of Blood and Blood Components).

The guidance is being issued in conformance with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR 601.12 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR 606.100 have been approved under OMB control number 0910–0116; the collections of information in 21 CFR 606.122 have been approved under OMB control number 0910–0116; and the collections of information in 21 CFR 630.6 have been approved under OMB control number 0910–0116.

III. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: November 3, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26870 Filed 11–6–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities, Office of Science Policy, Office of the Director; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Science Advisory Board for Biosecurity (NSABB).

Name of Committee: National Science Advisory Board for Biosecurity.

Date: December 3, 2009.

Time: 8:30 a.m. to 4 p.m. (Times are approximate and subject to change).

Agenda: Presentations and discussions regarding: (1) Introduction of new NSABB voting members; (2) federal responses to NSABB reports; (3) activities of the Working Groups on Outreach and Education and on International Engagement; (4) synthetic biology and NSABB draft report on biosecurity issues raised by synthetic biology; (5) public comments; and (6) other business of the Board.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Ronna Hill, NSABB Program Assistant, NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892, (301) 496–9838.

Under authority 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established the NSABB to provide advice, guidance and leadership regarding federal oversight of dual use research, defined as biological research that generates information and technologies that could be misused to pose a biological threat to public health and/or national security.

The meeting will be open to the public, however pre-registration is strongly recommended due to space limitations.

Persons planning to attend should register online at: *http://oba.od.nih.gov/biosecurity/biosecurity_meetings.html* or by calling the Dixon Group (Contact: Marianne Tshihamba at (202) 281–2800). Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate these requirements upon registration.

This meeting will also be Webcast. To access the Webcast, as well as the draft meeting agenda and pre-registration information, connect to: *http://oba.od.nih.gov/biosecurity/biosecurity_meetings.html.* Please check this site for updates.

Any member of the public interested in presenting oral comments at the meeting may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of an organization may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee. All written comments must be received by November 24, 2009 and should be sent via e-mail to *nsabb@od.nih.gov* with ''NSABB Public Comment'' as the subject line or by regular mail to 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, Attention Ronna Hill. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Dated: November 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26933 Filed 11–6–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings. The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individualsassociated 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, Nature's Solutions.

Date: December 1, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892. (301) 435–1210. *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Pharmacology.

Date: December 15–16, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Janet M. Larkin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892. 310–435–1026. *larkinja@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: November 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26925 Filed 11–6–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Acute Kidney Injury Ancillary Studies.

Date: December 4, 2009.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26931 Filed 11–6–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Granting of an Exclusive License

AGENCY: Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS), is contemplating the granting of an exclusive worldwide license to practice the invention embodied in the patent application referred to below to International Rollforms, Inc., having a place of business in Deptford, New Jersey. CDC intends to grant rights to practice this invention to no other licensees. The patent rights in this invention have been assigned to the government of the United States of America. The patent to be licensed is:

Title: Instrumented Rock Bolt, Data Logger and User Interface System, CDC Ref. #: I–017–01.

Patent No.: 7,324,007.

Filing Date: 12/27/2002.

Issue Date: 01/29/2008.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

This invention includes the use of rock bolts, strain gauges and data loggers to increase the stability of rock mass comprising the roof and walls of mines. Strain gauges affixed to the rock bolts provide a measure of the strains and hence the stresses which a rock bolt is subjected to. The rock bolt may include a data logger which is coupled to receive signals from one or more strain gauges, and to record these signals to memory.

ADDRESSES: Requests for a copy of this patent, inquiries, comments, and other materials relating to the contemplated license should be directed to Andrew Watkins, Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, telephone: (770) 488–8610; facsimile: (770) 488–8615. Applications for an exclusive license filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Only written comments and/or applications for a license which are received by CDC within thirty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 30, 2009.

Tanja Popovic,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–26939 Filed 11–6–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0126]

Privacy Act of 1974; Department of Homeland Security U.S. Immigration and Customs Enforcement—013 Alien Medical Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to establish a new Department of Homeland Security U.S. Immigration and Customs Enforcement system of records notice titled, Department of Homeland Security U.S. Immigration and Customs Enforcement—013 Alien Medical Records System of Records. This system maintains records that document the medical screening, examination, and treatment of aliens arrested and detained by U.S. Immigration and Customs Enforcement for violations of the Immigration and Nationality Act. The records contain the medical information for aliens detained in facilities owned and operated by U.S. Immigration and Customs Enforcement or its contractors, or in facilities where medical care is provided by Department of Health and Human Services Public Health Service Commissioned Corps Officers. The system also supports the collection and maintenance of medical information about these individuals and its dissemination in the case of infectious diseases, especially in the event of a public health emergency, such as an epidemic or pandemic. The information described in this notice was previously covered by a Department of Health and Human Services Patients Medical Record system of records. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 9, 2009. This new system will be effective December 9, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0126 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Lyn Rahilly (202–732–3300), Privacy Officer, U.S. Immigration and Customs Enforcement. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Alien Medical Records system of records is maintained by the Department of Homeland Security (DHS) U.S. Immigration and Customs Enforcement (ICE) Division of Immigration Health Services (DIHS), a division within the Office of Detention and Removal Operations (DRO). As noted above, the information described in this notice was previously covered by the Department of Health and Human Services (HHS) 9–15–0002 Patients Medical Record System Public Health Service Hospitals HHS/HRSA/BPHC System of Records (August 3, 2009, 74 FR 38456). This system of records maintains medical, mental health, and dental records that document the medical screening, examination, and treatment of aliens whom ICE arrests and detains for violations of the Immigration and Nationality Act (INA). The records contain the medical information for aliens detained in facilities owned and operated by ICE or its contractors, or in other facilities for ICE detainees where medical care is provided by ICE DIHS. It also maintains information about prisoners of the U.S. Marshals Service (USMS) who are housed in a detention facility operated by or on behalf of ICE pursuant to an agreement between the USMS and ICE. The system of records also supports the dissemination of medical information about these individuals in the case of infectious diseases especially in the event of a public health emergency, such as an epidemic or pandemic.

Before October 1, 2007, DHS and HHS maintained annual interagency agreements through which ICE DIHS, a component of HHS's Health Resources and Services Administration (HRSA), provided health care for ICE detainees. Medical records created by HRSA in providing those services were covered under a HHS Privacy Act system of records notice titled HHS 9–15–0002 Patients Medical Record System Public Health Service Hospitals HHS/HRSA/BPHC System of Records (August 3, 2009, 74 FR 38456). On August 23, 2007, a new agreement between DHS and HHS was signed to facilitate the transfer of the Federal detainee health care program responsibilities from HHS to DHS and detailed Public Health Service Commissioned Corps Officers to DHS on an open-ended basis to provide medical care for ICE detainees. HRSA has disbanded its DIHS, and ICE has

created a component within its DRO known as DIHS. ICE's DIHS now provides health services to ICE detainees through the detailed Public Health Service Commissioned Corps Officers from HHS and through other contracted medical professionals. With the transfer of this function, ICE now owns the medical records created by DIHS personnel and contracted medical professionals. This transfer of record ownership requires that ICE publish this system of records notice under the Privacy Act describing for the public the medical records it owns and maintains.

The medical services provided to ICE detainees include medical, mental health, and dental care. If a detainee needs care that the medical staff in the detention facility cannot provide, such as meeting with a specialist or receiving a medical procedure in a hospital or in an in-patient or out-patient facility, the medical staff makes arrangements to procure the consultation, treatment, or procedure. For each category of individuals described in this notice, ICE maintains medical records that document the person's health, including symptoms, diseases and conditions, treatments received, and medications prescribed. This information is typically shared with other health care providers to ensure continuity of care. For individuals with infectious diseases of public health significance, this information may be shared with public health officials in order to prevent exposure to or transmission of the disease.

Consistent with DHS's information sharing mission, information stored in the DHS/ICE–013 Alien Medical Records System of Records may be shared with other DHS components, as well as appropriate Federal, State, local, tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out the purposes of this system of records, including the medical treatment and removal of detainees from the United States.

It is important to note that DHS/ICE/DIHS is not subject to the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulation, ''Standards for Privacy of Individually Identifiable Health Information'' (Privacy Rule), 45 CFR Parts 160 and 164. DHS/ICE/DIHS does not meet the statutory definition of a covered plan under HIPAA, 42 U.S.C. 1320d(5), and is specifically carved out of the application of HIPAA as a ''government funded program whose principal activity is the direct provision of healthcare to persons.'' 45 CFR 160.103 (definition of a health plan). Because DHS/ICE/DIHS is not a covered entity, the restrictions proscribed by the HIPAA Privacy Rule are not applicable.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ICE–013 Alien Medical Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS DHS/ICE—013

SYSTEM NAME:

Immigration and Customs Enforcement Alien Medical Records System

SECURITY CLASSIFICATION:

Unclassified and for official use only.

SYSTEM LOCATION:

Records are maintained at detention facilities operated by and on behalf of ICE, at certain Intergovernmental Service Agreement (IGSA) facilities operated by and on behalf of State and local governments with whom ICE has an agreement, at ICE Headquarters in Washington, DC, and at ICE field offices. (**Note:** IGSA facilities are city, county, or State-owned facilities where ICE contracts for detention, staging, and/or holding services, or leases bed space.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by this system are primarily aliens arrested by ICE for administrative violations of the Immigration and Nationality Act (INA). These aliens have been booked into a detention facility owned and operated by ICE or ICE contractors, or into a facility where medical care is provided by ICE DIHS. ICE also maintains information about prisoners in the custody of the USMS who are being detained in facilities operated by or on behalf of ICE pursuant to an agreement between the USMS and ICE. Hereafter, the term ''in ICE custody'' will be used to refer to both aliens arrested by ICE and USMS prisoners being housed in a detention facility operated by or on behalf of ICE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name and aliases;
- Date of birth;
- Alien Registration Number (A–Number);
- Federal Bureau of Prisons Number (if applicable);
- Phone numbers;
- Email addresses;
- Addresses;
- Country of Origin;
- Nationality;
- Gender;
- Languages spoken;
- Medical history (self and family to establish medical history);
- Current medical conditions;
- Symptoms reported, including dates;
- Medical examination records and medical notes;
- Diagnostic data, such as tests ordered and test results;
- Problem list which lists all the diagnoses and medical symptoms or problems for an individual as determined by a medical practitioner or reported by the person;
- Refusal forms;
- Informed consent forms;
- Treatment records and medical treatment plans;
- Mental health records and mental health treatment plans;

- Prescription drug records;
- Over-the-counter drug records;
- Records concerning the diagnosis and treatment of diseases or conditions that present a public health threat, including information about exposure of other individuals and reports to public health authorities;
- Dental history and records, including x-rays, treatment, and procedure records;
- Correspondence related to an individual's medical or dental care;
- Physician or other medical/dental provider's name and credentials such as medical doctor, registered nurse, and Doctor of Dental Science;
- Legal documents, such as death certificate, do-not-resuscitate order, or advance directive (*e.g.,* living will);
- Device identifiers, such as hearing aids and pacemakers;
- Information about special needs and accommodations for an individual with disabilities, such as requiring a cane, wheelchair, special shoes, or needing to sleep on a bottom bunk; and
- Off-site care records (emergency room, hospitalizations, specialized care, records of previous medical care or testing)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public L. 110–329, 122 Stat. 3574, 3658 (2008); 5 U.S.C. 301; 44 U.S.C. 3101; 8 U.S.C. 1103, § 1222 and 1231; 42 U.S.C. 249. **Note:** The Health Insurance Portability and Accountability Act (HIPAA), Public Law 104–191, as amended, does not apply to the health information maintained in this system of records.

PURPOSE(S):

The purpose of this system is to document and facilitate the providing of medical, dental, and mental health care to individuals in ICE custody in facilities owned and operated by ICE or its contractors, or in other facilities where medical care is provided by HHS Public Health Service Commissioned Corps Officers. The system also supports the collection, maintenance, and sharing of medical information for these individuals in the interest of public health especially in the event of a public health emergency, such as an epidemic or pandemic.

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, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS, or HHS employee detailed to DHS, in his/her official capacity;

3. Any employee of DHS, or HHS employee detailed to DHS, in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To hospitals, physicians, medical laboratories and testing facilities, and other medical service providers, for the purpose of diagnosing and treating medical conditions or arranging the care of individuals in ICE custody and of individuals released or about to be released from ICE custody including, but not limited to, released under an order of supervision, on their own recognizance, on bond, on parole, or in an alternative to detention program.

I. To an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

J. To foreign governments for the purpose of coordinating and conducting the removal or return of aliens from the United States to other nations when disclosure of information about the alien's health is necessary or advisable to safeguard the public health, to facilitate transportation of the alien, to obtain travel documents for the alien, to ensure continuity of medical care for the alien, or is otherwise required by international agreement or law.

K. To immediate family members and attorneys or other agents acting on behalf of an alien to assist those individuals in determining the current medical condition of an alien in ICE custody provided they can present adequate verification of a familial or agency relationship with the alien.

L. To appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in

preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats.

M. To hospitals, physicians, and other healthcare providers for the purpose of protecting the health and safety of individuals who may have been exposed to a contagion or biohazard, and to assist such persons or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats.

N. To the U.S. Marshals Service (USMS) concerning USMS prisoners that are or will be held in detention facilities operated by or on behalf of ICE, and to Federal, State, or local law enforcement or correctional agencies concerning an individual in ICE custody that is to be transferred to such agency's custody, in order to coordinate the transportation, custody, and care of these individuals.

O. To third parties to facilitate placement or release of an alien (e.g., at a group home, homeless shelter, etc.) who has been or is about to be released from ICE custody, but only such information that is relevant and necessary to arrange housing or continuing medical care for the alien.

P. To appropriate State, local, or tribal agency or other appropriate authority for the purpose of providing information about an alien who has been or is about to be released from ICE custody who, due to a condition such as mental illness, may pose a health or safety risk to himself/herself or to the community. ICE will only disclose health information about the individual that is relevant to the health or safety risk they may pose and/or the means to mitigate that risk (e.g., the alien's need to remain on certain medication for a serious mental health condition).

Q. To appropriate State, local, or tribal agency or other appropriate authority for the purpose of reporting vital statistics (e.g., births, deaths).

R. To the U.S. Bureau of Prisons and other government agencies for the purpose of providing medical information about an alien when custody of the alien is being transferred from ICE to the other agency. This will include the transfer of information about unaccompanied minor children to the U.S. Department of Health and Human Services.

S. To individuals for the purpose of determining if they have had contact in a custodial setting with a person known or suspected to have a communicable or quarantinable disease and to identify and protect the health and safety of others who may have been exposed.

T. To a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or is seeking to become licensed.

U. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

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

STORAGE:

Records in this system are stored electronically and/or on paper in secure facilities behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name, Alien Registration Number (A–Number), or Bureau of Prisons Number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer systems containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

ICE is in the process of working with its Records Office to draft a proposed record retention schedule for the various records associated with the records described in this notice. ICE anticipates that:

(1) Medical records will be retained for ten (10) years after an individual has been released from ICE custody and then shall be destroyed;

(2) annual data on detainees who have died in ICE custody that has been transferred to the Bureau of Justice Statistics (BJS) and annual reports regarding other infectious diseases will be retained for ten (10) years and then destroyed;

(3) various statistical reports will be retained permanently by NARA; and

(4) monthly and annual statistical reports including those regarding workload operations will be destroyed when no longer needed for business purposes.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Immigration Health Services, Detainee Health Care Unit, Detention and Removal Operations, U.S. Immigration and Customs Enforcement, 1220 L Street, NW., Suite 500, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the U.S. Immigration and Customs Enforcement FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

• An explanation of why you believe the Department would have information on you;

• Identify which component(s) of the Department you believe may have the information about you;

• Specify when you believe the records would have been created;

• Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

• If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above. In addition, individuals in ICE-owned facilities or in contract detention facilities operated on behalf of ICE may request access to their records by making a request to the facility's health care unit. Specifically, individuals should submit a Form G–639, Freedom of Information/Privacy Act Request form, to any staff member.

ICE also detains individuals in Intergovernmental Service Agreement (IGSA) facilities. These facilities are city, county, or State-owned and operated facilities where ICE contracts for detention services or leases bed space. There is no set procedure for how individuals in the IGSA facilities request access to their records. Each facility has its own process. Persons seeking such information should contact the chief administrative officer of such facility for guidance.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information may be obtained from the individual, immediate family members, physicians, nurses, dentists, medical laboratories and testing facilities, hospitals, other medical and dental care providers, other law enforcement or custodial agencies, and public health agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: November 2, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–26910 Filed 11–6–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0114]

Privacy Act of 1974; Department of Homeland Security U.S. Coast Guard—060 Homeport System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to update and reissue a system of records notice titled, Department of Homeland Security/U.S. Coast Guard—060 Homeport System of Records. The updated system of records, Department of Homeland Security/U.S. Coast Guard—060 Homeport System of Records contains a secure collection of information from and about individuals and entities that are subject to the requirements of the Maritime Transportation Security Act of 2002. As a result of the biennial review of this system, the Department of Homeland Security U.S. Coast Guard is proposing changes to (1) the categories of individuals covered to include Federal, State and local government agency members involved in maritime safety, security and environmental protection missions; categories of records to include government service grade or military rate/rank, and for Transportation Worker Identification Credential new hire query, the addition of full name and optional social security number (last four; not required); (2) the purpose to state that the Homeport system will no longer be used to collect information from and about individuals for whom background screening will be conducted for purposes of establishing U.S. Coast Guard approved identification credentials for access to maritime facilities (records associated with this function have been deleted); and (3) the routine uses to conform with Department's library of routine uses. No new routine uses have been added. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 9, 2009. The updates to this system will be effective December 9, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0114 by one of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* 703–483–2999.

• *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

• *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

• *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Sherry A. Richardson (202–475–3515), Privacy Officer, U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) U.S. Coast Guard (USCG) is revising a system of records under the Privacy Act of 1974 (5 U.S.C. 552a), for the DHS/USCG—060 Homeport System of Records. The Department is updating and reissuing the DHS/USCG—060 Homeport System of Records (71 FR 25203, April 28, 2006) to cover inclusion of these updated records. The collection and maintenance of this information will assist the USCG in meeting its maritime security requirements under the Maritime Transportation Security Act (MTSA) of 2002.

MTSA establishes a comprehensive national system of transportation security enhancements to protect America's maritime community against the threat of terrorism without adversely affecting the flow of commerce through United States ports. The USCG is the lead Federal agency for coordinating and implementing maritime security and has significant enforcement responsibilities under the MTSA. Among other responsibilities under MTSA, the USCG requires that maritime security plans be developed by maritime private sector industry for ports, vessels, and facilities. Additionally, the DHS/USCG—060 Homeport System of Records will be used for a limited set of individuals for the Transportation Worker Identification Credential (TWIC)

''New Hire'' Provision as delineated in USCG Navigation and Vessel Inspection Circular (NVIC) 03–07, e.h.(1). The program is for any direct hire employee who is required to have a TWIC but has not yet activated his/her card in order to allow the individual to have unaccompanied access on the facility, or vessel, for up to 30 days.

Representatives of the maritime industry entities regulated by MTSA, members of Area Maritime Security Committees (AMSC) and other officials; as well as USCG personnel will be able to register and use the DHS/USCG—060 Homeport System of Records for secure information dissemination and collaboration. Regulated entities will be able to use the DHS/USCG—060 Homeport System of Records for electronic submission and approval of required security plans, and the USCG will verify compliance with security requirements. The DHS/USCG—060 Homeport System of Records will no longer be used to collect information from and about individuals for whom background screening will be conducted for purposes of establishing USCG-approved identification credentials for access to maritime facilities. This function was terminated when the Transportation Worker Identification Credential (TWIC) requirements went into effect. Records associated with this function have been deleted. The DHS/USCG—060 Homeport System of Records will be used to collect information for the purpose of facilitating the establishment of AMSC membership, and to inform owners, operators, and security officers of MTSA regulated entities of the names of persons who have passed the background screening.

Consistent with DHS's information sharing mission, information stored in the DHS/USCG—060 Homeport System of Records may be shared with other DHS components, as well as appropriate Federal, State, local, tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice. DHS has updated the routine uses to conform with the Department's library of routine uses. No new routine uses have been added.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/U.S. Coast Guard—060 Homeport System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records: DHS/USCG–060

SYSTEM NAME:

United States Coast Guard Homeport.

SECURITY CLASSIFICATION:

Classified, sensitive, and unclassified.

SYSTEM LOCATION:

Records are maintained at USCG Headquarters in Washington, DC and field locations including the USCG Operations Systems Center, 600 Coast Guard Drive, Kearneysville, WV 25430.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

- Representatives of the maritime industry such as:
  - Members of Area Maritime Security Committees (AMSC);
  - National Harbor Safety Committees and Environmental Committees (NHSCEC); and
  - Other entities regulated under the Maritime Transportation Security Act (MTSA).
- Federal, State and local government agency members involved in maritime safety, security and environmental protection missions. These persons may complete on-line forms and/or request an account to provide the information required by the USCG, access sensitive but unclassified information, and participate in collaboration communities.
- Individuals for whom background screening will be conducted for the purpose of facilitating the establishment of AMSC membership and to inform owners, operators, and security officers of MTSA regulated entities of the names of persons who have passed the background screening including, but not limited to,
  - Owners; and
  - Operators and their employees, and non-employees who require regular access privileges to such regulated vessels and facilities, as well as many credentialed merchant mariners.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- To participate in the Homeport portal for information dissemination and collection, the following information may be included in this record system:
  - Full name;
  - Complete address;
  - Country;
  - Company or organization name;
  - Work phone;
  - Mobile phone;
  - 24 hour contact phone;
  - Fax;
  - Pager;
  - E-mail address;
  - Alternate e-mail address; and
  - Referral full name/work and cell phone/e-mail address.
- For USCG active duty and civilian personnel, the following fields are pre-populated using data from the Direct Access system, the USCG's enterprise human resource system:
  - Employee ID;
  - Billet control number;
  - Government Service Grade or Military Rate/Rank ; and
  - Position number.
- For purposes of establishing AMSC membership, the following information will be included in accordance with 33 CFR 103.305 ''Composition of an Area Maritime Security (AMS) Committee:''
  - Full name;

○ Date of birth; and

○ Alien identification number (if applicable).

• For purposes of establishing TWIC New Hire query, the following information will be included in accordance with NVIC 03–07:

○ Full name; and

○ Social Security Number (last 4 digits only) should it be provided (not required).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 U.S.C. 3717; 46 U.S.C. 12501; 44 U.S.C. 3507; 33 U.S.C. 1223; 50 U.S.C. 191; 14 U.S.C. 93(a) (6); 33 CFR part 125.

PURPOSE(S):

The Homeport system is an enterprise tool that will facilitate compliance with the requirements set forth in the Maritime Transportation Security Act (MTSA) of 2002, by providing secure information dissemination, advanced collaboration, electronic submission and approval for vessel and facility security plans, and complex electronic and telecommunication notification capabilities. The collection of personally identifiable information concerning those with access to the Homeport system will allow the USCG to validate the suitablility, identify the eligibility of those who request permission and/or have access to the system.

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, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

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

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by first name, last name, city, State, Captain of the Port Zone, vessel role, facility role, committee membership, vessel association, case identification number, or facility association.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls are in place to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

In accordance with AUTH: N1–026–06–06, records of registration information are destroyed upon account termination. Maritime personnel screening data is destroyed after two years. Response-associated information, such as personal data needed for search and rescue purposes, is destroyed 120 days following completion of response operations.

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Information Resources (G–PRI), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the USCG FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained by registered users, the general public if completing an on-line form during marine casualty incidents or natural disasters, individuals who are proposed to have access to maritime facilities, government agencies, and USCG personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: November 2, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–26911 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–36]

Notice of Proposed Information Collection: Comment Request, Delegated Processing for Certain 202 Supportive Housing for the Elderly Projects

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:*. January 8, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Program Contact, Willie Spearmon, Director, Office of Housing Assistance and Grants Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Delegated Processing for Certain 202 Supportive Housing for the Elderly Projects

OMB Control Number, if applicable: 2502–XXXX.

Description of the need for the information and proposed use: Section 2835(b) of the Housing and Economic Recovery Act of 2008 directs the Department to delegate review and processing of certain Section 202 Supportive Housing for the Elderly projects to selected State or local housing agencies. The Delegated Processing Agreement establishes the relationship between the Department and a Delegated Processing Agency (DPA) and details the duties and compensation of the DPA. The Certifications form provides the Department with assurances that the review of the application was in accordance with HUD requirements. The Schedule of Projects form provides the DPA with information necessary to determine if they wish to process the project and upon signature commits them to such processing. Staff of the Office of Housing Assistance and Grant Administration, Multifamily Housing Office will use the information to determine if a housing finance agency wishes to participate in the program, and obtain certifications that the review of the application was in accord with HUD requirements.

Agency form numbers, if applicable: 90000, 90001, 90002

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 50. The number of respondents is 15, the number of responses is 35, the frequency of response is on occasion, and the burden hour per response is 6.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 3, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–26871 Filed 11–6–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–86]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Public Housing Assessment System—Management Operations Certification

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 23, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: Mr. Ross A. Rutledge, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Ross_A._Rutledge@omb.eop.gov;* fax: (202)395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail: *Lillian.L.Deitzer@hud.gov;* telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed information collection for the Public Housing Assessment System—Management Operations Certification. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Public Housing Assessment System—Management Operations Certification.

Description of Information Collection: This is a reinstatement of a discontinued collection. HUD assesses all of the management operations data required under section 6(j) of the Act in a format comprising six sections or sub-indicators. The PHAS regulation requires that all management operations data be submitted electronically to HUD, in a HUD prescribed format. HUD uses the management data it collects from program participants to evaluate all major areas of a participant's management operations. The management data are evaluated using predetermined weights and factors to compute an indicator score for the management operations of each reporting entity. HUD uses this score with three other PHAS component scores (i.e., physical condition, financial condition and resident services) to produce an overall PHAS score for each PHA. The overall score determines if a PHA's performance is high, standard, or troubled.

OMB Control Number: 2535–0106.

Agency Form Numbers: HUD–50072.

Members of Affected Public: PHAs, State or Local government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: The estimated number of respondents is an annual average of 3,174 PHAs that submit management operations certification. The average number for each PHA response varies by size of the PHA, with a total reporting burden of 3,644 hours, or an average of 1.15 hours per respondent.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 2, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–26866 Filed 11–6–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5067–N–05]

Extension and Expansion of HUD's Implementation Guidance for Section 901 of the Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, as Revised by Section 11003 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 To Include Calendar Years 2008 and 2009 Program Funds

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice supplements four earlier notices published in the **Federal Register** that provided guidance to public housing agencies (PHAs) on implementing the authority provided to HUD by section 901 of the ''Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006'' (Pub. L. 109–148, December 30, 2005) to allow PHAs in the most heavily impacted areas of Louisiana and Mississippi affected by Hurricanes Katrina and Rita to combine Housing Choice Voucher and public housing operating and capital funds to assist families who were receiving housing assistance under the U.S. Housing of 1937 immediately prior to Hurricanes Katrina or Rita and were displaced from their housing by the hurricanes. Section 901 assists PHAs to flexibly and

efficiently facilitate disaster recovery in those areas to benefit the formerly assisted and displaced families. Such authority was initially provided for calendar years 2006 and 2007, and later extended through calendar years 2008 and 2009 by section 11003 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329). On December 17, 2008, HUD published a **Federal Register** notice advising eligible PHAs to submit Fungibility Plans for CY 2008 Section 901 fungibility no later than January 31, 2009.

Eligible PHAs with a continued need for assisting families who were receiving housing assistance under the 1937 Housing Act immediately prior to Hurricane Katrina or Rita and were displaced from their housing by the hurricanes and are interested in using authority provided under the extended Section 901 authority must submit a 2009 Notice of Intent and Fungibility Plan in accordance with the July 28, 2006, October 30, 2006, and August 6, 2007 **Federal Register** notices. Further information on the required contents of 2009 Fungibility Plans, funds management, eligible activities, reporting, and HUD processing of CY 2009 Section 901 fungibility will be posted to the Office of Public and Indian Housing Web site at *http://www.hud.gov/offices/pih*.

DATES: Eligible PHAs must submit their Calendar Year 2009 Notices of Intent and Fungibility Plans no later than November 30, 2009.

FOR FURTHER INFORMATION CONTACT: For technical assistance and other questions concerning the Notice of Intent and Section 901 Fungibility Plan, PHAs should contact their local HUD Public Housing Hub in New Orleans, Louisiana, or Jackson, Mississippi; or Bessy Kong, Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–5000, telephone 202–402–2548 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Environmental Review

This Notice provides operating instructions and procedures in connection with activities under HUD's notice FR–5067–N–01 (July 28, 2006), for which a Finding of No Significant Impact was prepared. Accordingly, under 24 CFR 50.19(c)(4), this Notice is categorically excluded from environmental review under the Environmental Policy Act of 1969 (42 U.S.C. 4321).

SUPPLEMENTARY INFORMATION: On July 28, 2006, HUD published notice FR–5067–N–01 (71 FR 42996) entitled, ''Implementation Guidance for Section 901 of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006.'' This Notice provided interested PHAs submission requirements including a Notice of Intent to invoke flexibility and a detailed Section 901 Fungibility Plan. Section 901 of the supplemental appropriations act authorizes HUD to allow PHAs to combine assistance provided under sections 9(d) and 9(e) of the United States Housing Act of 1937 (Act) and assistance provided under section 8(o) of the Act, for the purpose of facilitating the prompt, flexible and efficient use of funds provided under these sections of the Act to assist families who were receiving housing assistance under the Act immediately prior to Hurricane Katrina or Rita and were displaced from their housing by the hurricanes. Section V.A. of the July 28, 2006 notice, entitled, ''General Procedures for Combining Public Housing and Voucher Funds under Section 901,'' provided instructions for PHAs interested in implementing the flexibility in funding authorized in Section 901.

On October 30, 2006, HUD published notice FR–5067–N–02 (71 FR 63340) extending the period for eligible public housing agencies (PHAs) located within the most heavily impacted areas of Louisiana and Mississippi that are subject to a declaration by the President of a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in connection with Hurricanes Katrina or Rita to submit Notices of Intent and Fungibility Plans in accordance with the July 28, 2006, notice. In addition to extending the PHA submission deadline, the October 30, 2006 Notice removed the restriction that the combined funding may not be spent for uses under the Housing Choice Voucher program.

On August 6, 2007, HUD published notice FR–5067–N–03 (72 FR 43657) extending Section 901 fungibility through Calendar Year 2007 pursuant to section 4803 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act (Pub. L. 110–28, May 25, 2007).

This Notice revises the earlier notices to incorporate the extension of Section 901 fungibility from calendar year (CY) 2007 to calendar years 2006, 2007, 2008, and 2009 as authorized by section 11003 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329).

As noted earlier in this notice, eligible PHAs interested in combining (CY) 2009 funds must submit a 2009 Notice of Intent and Fungibility Plan in accordance with the July 28, 2006 and subsequent **Federal Register** notices. The plans must describe in detail the source programs from which funding will be provided, the end program for which funds will be used, and the specific activities to be implemented and how they will directly assist families that were receiving housing assistance under the 1937 Housing Act before Hurricanes Katrina and Rita, and who were displaced from their housing as a result of the hurricanes. The 2009 plans must provide detailed information to identify formerly assisted and displaced families by program, program status, and former residence. Families that were evacuated as a result of the hurricanes and returned to their original, habitable housing unit are not considered displaced. In 2009, HUD will not accept plans to use Section 901 fungibility to develop new housing units for populations that do not meet the definition of families that were formerly assisted under the 1937 Housing Act immediately prior to Hurricanes Katrina and Rita and that were displaced from their housing by the hurricanes. Further, HUD will not accept plans for new unit development, other than for units that will be placed under project-based voucher (PBV) contracts under the Housing Choice Voucher program and/or public housing units that will come under a public housing Annual Contributions Contract (ACC). Fungibility plans for using Section 901 flexibility to support the cost of developing and constructing new units must include preliminary development proposals that describe the legal and business relationships of all participating entities and the PHA, the number and specific type of housing units supported with Section 901 funds that will be placed under Annual Contributions Contracts (ACCs) or Housing Choice Voucher (HCV) project-based contracts, the proposed site, site plan, and neighborhood; all financing including sources and uses, and a preliminary development/construction cost estimate based on schematic drawings and outline specifications.

HUD approvals of Fungibility Plans may be contingent upon the PHA later providing final development documents that include, but are not limited to ten-year operating pro formas including underlying assumptions, financing documents, feasibility analyses, life cycle analyses, schematic drawings and building designs, final development and construction cost estimates.

The 2006 Section 901 implementation notice also sets forth accounting requirements for Section 901 flexibility, which require separate accounting by source year (2006, 2007, 2008, and 2009), and the creation of a separate column on the Financial Data Schedule (FDS). The notice also specifies time periods for completion of activities approved under Section 901. Further information on HUD processing of CY 2009 Section 901 flexibility may be found in the PIH notices section of the Office of Public and Indian Housing Web site at: *http://www.hud.gov/offices/pih*.

2009 Notices of Intent and Fungibility Plans should be dated and submitted to the following addresses and contacts, as listed in the July 28, 2006, notice: PHAs should submit one copy to the Public Housing Director of the HUD office in New Orleans, Louisiana or Jackson, Mississippi, as applicable, and the original to HUD Headquarters, Office of Public and Indian Housing, Office of Policy, Program, and Legislative Initiatives, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–5000, Attention: Bessy Kong/Sherry McCown. To expedite HUD processing, electronic copies of the original, signed Notices of Intent and Fungibility Plans should be directed to the following e-mail address: *sherry.fobearmccown@hud.gov*.

Dated: November 2, 2009.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing, Rodger Boyd, Deputy Assistant Secretary for Office of Native American Programs.

[FR Doc. E9–26864 Filed 11–6–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acceptance of Concurrent Jurisdiction

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) has accepted conveyance from the State of Arizona on behalf of the United States concurrent criminal jurisdiction over federally-owned and controlled lands and waters administered by the National Park Service within Chiricahua National Monument, Coronado National Memorial and Fort Bowie National Historic Site in Cochise County, Arizona.

FOR FURTHER INFORMATION CONTACT: Superintendent, Southeast Arizona Group, 4101 East Montezuma Canyon Road, Hereford, AZ 85615, or (520) 366–5515.

SUPPLEMENTARY INFORMATION: Under Arizona Revised Statutes Title 37 Section 620, the governor of the State, upon receipt of a written request from the United States, may cede concurrent criminal jurisdiction over federal lands to the United States. On April 23, 2009, the Honorable Janice K. Brewer, Governor of the State of Arizona, ceded concurrent jurisdiction to the United States for all lands and waters owned or to be acquired by the National Park Service within the authorized boundaries of Chiricahua National Monument, Coronado National Memorial, and Fort Bowie National Historic Site. On September 22, 2009, Dan Wenk, Acting Director of the National Park Service, under the authority granted in Title 40 United States Code, Section 3112, accepted the cession of jurisdiction from the State of Arizona.

Dated: October 14, 2009.

Rick Obernesser,

Acting Associate Director, Visitor and Resource Protection, National Park Service.

[FR Doc. E9–26944 Filed 11–6–09; 8:45 am]

BILLING CODE 4312–CP–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Comment Request for the Comprehensive Test Ban Treaty

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0059).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on July 31, 2010. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC we must receive them on or before January 8, 2010.

ADDRESSES: Please submit a copy of your comments to Phadrea Ponds, Information Collection Clearance Officer, U.S. Geological Survey, 2150–C Centre Avenue, Fort Collins, CO 80526–8118 (mail); 970–226–9444 (phone); 970–226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–0059 in the subject line.

FOR FURTHER INFORMATION CONTACT: Lori E. Apodaca at 703–648–7724 or by mail at U.S. Geological Survey, 989 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

SUPPLEMENTARY INFORMATION:

I. Abstract

The collection of this information is required by the Comprehensive Test Ban Treaty (CTBT), and will provide the CTBT Technical Secretariat with geographic locations of sites where chemical explosions greater than 300 tons TNT-equivalent have occurred. Respondents to the information collection request are U.S. nonfuel minerals producers.

II. Data

OMB Control Number: 1028–0059.

Title: Comprehensive Test Ban Treaty.

Type of Request: Extension of a currently approved collection.

Affected Public: U.S. nonfuel minerals producers.

Respondent Obligation: Voluntary.

Frequency of Collection: Annually.

Estimated Number of Annual Responses: 2,100.

Annual Burden Hours: 525 hours. We expect to receive 2,100 annual responses. We estimate an average of 15 minutes per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control

number. Until OMB approves a collection of information, you are not obligated to respond.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

USGS Information Collection Clearance Officer: Phadrea Ponds 970–226–9445.

Dated: November 3, 2009.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. E9–26895 Filed 11–6–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Determination of Valid Existing Rights Within the Daniel Boone National Forest, Kentucky

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: This notice announces our decision on a request for a determination of valid existing rights (VER) under section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). We have determined that Jag Energy LLC possesses VER for a coal haul road within the boundaries of the Daniel Boone National Forest in Leslie County, Kentucky. This decision will allow Jag Energy LLC to obtain a Kentucky surface coal mining and reclamation permit for the road in question and to use the road to access and haul coal from a surface mine located on adjacent private lands.

DATES: *Effective Date:* November 9, 2009,

FOR FURTHER INFORMATION CONTACT: Joseph L. Blackburn, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260–8402. Fax: (859) 260–8410. E-mail: *jblackburn@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. What Is the Nature of the VER Determination Request?
II. What Legal Requirements Apply to This Request?
III. What Information is Available Relevant to the Basis for the Request?
IV. How We Processed the Request.
V. How We Made Our Decision.
VI. What Public Comments Were Received?
VII. How Can I Appeal the Determination?
VIII. Where Are the Records of This Determination Available?

I. What Is the Nature of the VER Determination Request?

On October 21, 2008, Mr. John Begley II submitted a request for a determination of VER on behalf of Mr. William T. Gilbert of Jag Energy LLC. Jag Energy LLC applied for a permit (Application #866–0264) to conduct surface coal mining operations on privately owned land in Bear Branch, Leslie County, Kentucky. The property to be mined is adjacent to the Daniel Boone National Forest.

William T. Gilbert is seeking a determination that Jag Energy LLC has VER under paragraph (c)(1) of the definition of VER in 30 CFR 761.5 to use an existing road across Federal lands within the Daniel Boone National Forest as an access and haul road for the proposed mine. No other surface coal mining operations would be conducted on Federal lands within the Daniel Boone National Forest as part of this mine.

On December 16, 2008, we published a notice in the **Federal Register** (73 FR 76382) in which we provided an opportunity for the public to comment on the request for a determination of VER to use an existing Forest Service road as a coal mine access and haul road across Federal lands within the boundaries of the Daniel Boone National Forest in Leslie County, Kentucky. The comment period closed on January 15, 2009. We received no comments.

II. What Legal Requirements Apply to This Request?

Section 522(e)(2) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1272(e)(2), prohibits surface coal mining operations on Federal lands within the boundaries of any national forest, with two exceptions. The first exception pertains to surface operations and impacts incidental to an underground coal mine. The second relates to surface operations on lands within national forests west of the 100th meridian. Neither of those exceptions applies to the request now under consideration.

The introductory paragraph of section 522(e) also provides two general exceptions to the prohibitions on surface coal mining operations in that section. Those exceptions apply to operations in existence on the date of enactment of the Act (August 3, 1977) and to land for which a person has VER. SMCRA does not define VER. We subsequently adopted regulations defining VER and clarifying that, for lands that come under the protection of 30 CFR 761.11 and section 522(e) after the date of enactment of SMCRA, the applicable date is the date that the lands came under protection, not August 3, 1977.

On December 17, 1999 (64 FR 70766–70838), we adopted a revised definition of VER, established a process for submission and review of requests for VER determinations, and otherwise modified the regulations implementing section 522(e). At 30 CFR 761.16(a), we published a table clarifying which agency (OSM or the State regulatory authority) is responsible for making VER determinations and which definition (State or Federal) will apply. That table specifies that OSM is responsible for VER determinations for Federal lands within national forests and that the Federal VER definition in 30 CFR 761.5 applies to those determinations.

Paragraph (c) of the Federal definition of VER contains the standards applicable to VER for roads that lie within the definition of surface coal mining operations. Jag Energy LLC is seeking a VER determination under paragraph (c)(1), which provides that a person who claims VER to use or construct a road across the surface of lands protected by 30 CFR 761.11 or section 522(e) of SMCRA must demonstrate that the ''road existed when the land upon which it is located came under the protection of § 761.11 or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations.''

Based on other information available to us, we also considered whether VER might exist under the standard in paragraph (c)(3), which requires a demonstration that a ''valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e).''

III. What Information Is Available Relevant to the Basis for the Request?

The following information has been submitted by Jag Energy LLC or obtained from the United States Forest Service (USFS) or the Kentucky Department for Natural Resources (DNR):

1. A 1.76 mile long x 12 foot wide road designated USFS road FSR 1669 exists on the land to which the VER determination request pertains;
2. The land upon which the road is located was in Federal ownership as part of the Daniel Boone National Forest on August 3, 1977, the date of enactment of SMCRA;
3. A letter from USFS District Ranger, John Kinney, indicates that William Gilbert has applied for a special use permit for the use of Forest Service Road 1669 to access his property in Bear Branch, Ky.;
4. An affidavit from John Hollen, a resident of Bear Branch in Leslie County, Ky indicates that the proposed haul road contained in Jag Energy LLC application #866–0264 crossing the USFS property was used prior to 1977 as a coal haul road;
5. A coal lease between William T. Gilbert *et al.* Lessors, and Kenneth C. Smith, Lessee, for the Number four coal seam on lands described in Deed Book 34, page 464 and an Affidavit of Descent of John and Sally B. Gilbert in the records of the Leslie County, Ky. Court Clerk's office;
6. A copy of the deed and Affidavit of Descent referenced in the coal lease; and,
7. A copy of Special Use Permit RED 5064–01, issued by the USFS to Jag Energy LLC, authorizing the use of Forest Service Road 1669 to access the proposed mine site.

IV. How We Processed the Request

We received the request on October 21, 2008, and determined that it was administratively complete on October 30, 2008. That review did not include an assessment of the technical or legal adequacy of the materials submitted with the request.

As required by 30 CFR 761.16(d)(1), we published a notice in the **Federal Register** seeking public comment on the merits of the request on December 16, 2008 (73 FR 76382). We also published notices on December 11, 2008, December 18, 2008, December 25, 2008, and January 1, 2009, in Leslie County News, Hyden, Kentucky, a newspaper of general circulation in Leslie County, Kentucky.

After the close of the comment period on January 15, 2009, we reviewed the materials submitted with the request, and other relevant, reasonably available information and determined that the record was sufficiently complete and adequate to support a decision on the merits of the request upon issuance of the Forest Service Special Use permit for use of the road to which the VER request pertained.

We evaluated the record in accordance with the requirements at 30 CFR 761.16(e) as to whether the requester has demonstrated VER for the proposed access and haul road. For the reasons discussed below, we have determined that the requestor has demonstrated VER.

V. How We Made Our Decision

As we stated above, Jag Energy LLC sought a VER determination under paragraph (c)(1) of the definition of VER at 30 CFR 761.5, which provides as follows:

> (1) The road existed when the land upon which it is located came under the protection of section 761.11 or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations.

Based upon information contained in the VER request submitted by Jag Energy and information obtained from the USFS and DNR, the following facts were determined about this road:

> A 1.76 mile long x 12 foot wide road designated USFS road FSR 1669 exists on the land to which the VER determination request pertains. The land upon which the road is located was in Federal ownership as part of the Daniel Boone National Forest on August 3, 1977, the date of enactment of SMCRA. Thus the road existed when the land upon which it is located came under the protection of section 761.11 or 30 U.S.C. 1272(e).

The VER standard in the definition of VER at 30 CFR 761.5 also requires that the person seeking VER must have ''a legal right to use the road for surface coal mining operations.'' That ''legal right'' standard was added to the definition of VER on December 17, 1999 (64 FR 70766, 70832). In the preamble to that revision of the definition of VER, OSM stated that a person must demonstrate a legal right to use the road for surface coal mining operations. (See 64 FR 70791) That is, despite the fact that a road existed on August 3, 1977, that fact alone doesn't give the applicant the right to use the road for surface coal mining operations. To comply with this requirement, Jag Energy applied for and received a Road Use Permit for the road in question from the Forest Service dated June 26, 2009. That permit authorizes Jag Energy LLC to rehabilitate and maintain the road while using it to access the mine site.

Therefore, we conclude that the June 26, 2009, Road Use Permit from the Forest Service is sufficient to prove that Jag Energy LLC has a legal right to use the road for surface coal mining operations.

As stated previously, we also considered whether VER might exist under the standard in paragraph (c)(3), which requires a demonstration that a ''valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e).'' In our review of the available information we were able to determine that a special use permit had been issued previously by the USFS for the road in question to William T. Gilbert. However we were unable to determine that the special use permit for the road was issued prior to SMCRA, or that the special use permit was for the purpose of conducting surface coal mining operations.

Therefore we cannot conclude that the applicant has demonstrated VER under the standard contained in paragraph (c)(3) of the VER definition.

Based on the information above, it is the decision of OSM that the Jag Energy LLC does have valid existing rights to use this road. This decision is based primarily on the finding that the road was in existence at this location prior to the enactment of SMCRA, and that the applicant does have a legal right to use this road for surface coal mining operations under the special use permit issued by the USFS on June 26, 2009.

This finding is in accordance with the definition of VER pertaining to roads found at 30 CFR 761.5 subdivision (c)(1).

VI. What Public Comments Were Received?

No public comments were received.

VII. How Can I Appeal the Determination?

Our determination that VER exists is subject to administrative and judicial review under 30 CFR 775.11 and 775.13 of the Federal regulations.

VIII. Where Are the Records of this Determination Available?

Our records on this determination are available for your inspection at the

Lexington Field Office at the location listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: August 24, 2009.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. E9–26954 Filed 11–6–09; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2009–N178; 1265–0000–10137–S3]

Rose Atoll National Wildlife Refuge, American Samoa

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; announcement of public open house meetings; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) for the Rose Atoll National Wildlife Refuge (Refuge). We will also prepare an environmental assessment (EA) to evaluate the potential effects of various CCP alternatives. We provide this notice in compliance with our CCP policy to advise the public and other Federal and State agencies and Tribes of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process. We are also announcing public meetings and requesting public comments.

DATES: To ensure consideration, please send your written comments by December 9, 2009.

ADDRESSES: Send your written comments or requests for more information by any of the following methods.

E-mail: *FW1PlanningComments@fws.gov* (include ''Rose Atoll'' in the subject line of the message).

U.S. Mail: Don Palawski, Project Leader, Pacific Remote Islands National Wildlife Refuge Complex, 300 Ala Moana Blvd., Room 5–231, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Don Palawski, Project Leader, (808) 792–9560 (phone).

SUPPLEMENTARY INFORMATION:

Refuge Overview

Rose Atoll Refuge was established in 1973 after a cooperative agreement between the Government of American Samoa and the Service was signed. The Refuge is part of American Samoa and is located 78 miles east-southeast of Tau Island in the Manua Group at latitude 14°32′52″ south and 168°08′34″ west. The Refuge includes approximately 20 acres of land and 1,600 acres of lagoon surrounded by a perimeter reef. The lands, submerged lands, waters, and marine environment of the Refuge support a dynamic reef ecosystem that is home to a very diverse assemblage of terrestrial and marine species, some of which are Federally listed as threatened or endangered. One of the Refuge's most striking features is the pink hue of the perimeter reef caused by the dominance of coralline algae.

National Monument Establishment and Management Responsibilities

On January 6, 2009, President George W. Bush established the Rose Atoll Marine National Monument (MNM, or Monument) by signing Presidential Proclamation 8337 (Proclamation) under the authority of the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431). The Rose Atoll Refuge is part of the Rose Atoll MNM. Rose Atoll MNM consists of approximately 13,451 square miles of emergent and submerged lands and waters, with an outer boundary that is approximately 50 nautical miles from the mean low water line of Rose Atoll, the Monument's center.

Through the Proclamation, management responsibility for the Monument was assigned to the Secretary of the Interior, in consultation with the Secretary of Commerce. The Secretary of the Interior delegated management responsibility to the Service's Director (Secretary of the Interior Order 3284, January 16, 2009). The Director will continue to manage Rose Atoll Refuge for the conservation and protection of the Refuge's unique and valuable fish and wildlife resources, consistent with protection of the Monument's resources identified in the Proclamation.

Through the Proclamation, the Secretary of Commerce's National Oceanic and Atmospheric Administration (NOAA) was assigned primary management responsibility for fishery-related activities in the Monument's marine areas located seaward of the mean low water line of Rose Atoll, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The Secretary of Commerce was also directed in the Proclamation to initiate the process to add the marine area of Rose Atoll MNM to the Fagatele Bay National Marine Sanctuary in accordance with the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*)

When completed, the Refuge's CCP and NOAA's Fagatele Bay National Marine Sanctuary management plan and fishery regulations will be referenced in and will form the foundation of the Monument's management plan. Agencies with jurisdiction or special expertise, including the U.S. Department of Defense, U.S. Department of State, and the Government of American Samoa, are to be treated as cooperating agencies during development of any Rose Atoll MNM management plans.

The CCP Planning Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction for conserving wildlife and habitats, CCPs identify wildlife-dependent recreational opportunities compatible with each refuge's establishing purposes and the NWRS mission, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS is established for specific purposes. We use a refuge's purposes to develop and prioritize its management goals and objectives within the NWRS mission, and to determine a refuge's compatible public uses. The CCP planning process provides opportunities for the public to participate in evaluating our management goals and objectives for conserving important wildlife habitat, and providing wildlife-dependent recreation opportunities.

Throughout our CCP planning process, we provide participation opportunities for the public and other agencies and organizations, including agencies of the American Samoa government. At this time, we encourage input in the form of issues, concerns,

ideas, and suggestions for the future management of Rose Atoll Refuge.

We will conduct the environmental review of this project and develop an EA in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

We request your input regarding issues, concerns, ideas, and suggestions important to you and the future management of the Rose Atoll Refuge. Opportunities for additional public input will be announced throughout the planning process.

Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. We have briefly summarized the issues below. During public scoping, we may identify additional issues.

- Protect and restore terrestrial habitat for *Pisonia* forest, sea turtle nesting, seabird nesting, and shorebirds.
- Protect and restore marine habitat for coral reefs, giant clams, marine mammals, sea turtles, seabirds, and fish.
- Analyze options for issuing permits.
- Identify potential, compatible scientific exploration and research opportunities.
- Identify potential locations and stipulations for fishing (recreational and traditional indigenous subsistence).
- Identify threats to the islands and reefs (unauthorized access, illegal fishing, marine debris, shipwrecks, and invasive species).
- Provide wildlife observation and photography and environmental education opportunities.
- Identify the Refuge's relationship with Fagatele Bay National Marine Sanctuary and opportunities for cooperative activities.
- Develop monitoring and enforcement programs.
- Protect cultural resources.

Public Meetings

We will hold public open house meetings to provide more information about the CCP process and obtain public comments. Public open house meetings will be held in the Manu'a Islands during November 2009, meeting details will be advertised locally. A public open house meeting is scheduled for November 19, 2009, from 4 p.m. to 6 p.m. at the Convention Center in Utulei, Tutuila, American Samoa.

Public Availability of Comments

Before including your address, phone number, 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 2, 2009.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. E9–26929 Filed 11–6–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2009–N238]
[96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for permits to conduct certain activities with endangered species and/or marine mammals. Both the Endangered Species Act and the Marine Mammal Protection Act require that we invite public comment on these permit applications.

DATES: Written data, comments or requests must be received by December 9, 2009.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358-2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Submit your written data, comments, or requests for copies of the complete applications to the address shown in **ADDRESSES**.

Applicant: University of Texas, Austin, TX, PRT-182099

The applicant requests an amendment to the permit to acquire from Coriell Institute of Medical Research, Camden, NJ, in interstate commerce cell line cultures from various threatened and endangered non-human Primates species for the purpose of scientific research. The notification covers activities conducted by the applicant over the remainder of the 5–year period.

Applicant: Panther Ridge Conservation Center, Wellington, FL, PRT-224100

The applicant requests a permit to import one live, captive-born cheetah (*Acinonyx jubatus*) from South Africa for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and/or marine mammals (50 CFR Part 18). Submit your written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications to the address shown in **ADDRESSES**. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Tom S. Smith, Brigham Young University, Provo, UT, PRT-225854

The applicant requests a permit to authorize harassment of up to 18 polar bears (*Ursus maritimus*) per year by maintaining video cameras near dens for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5–year period.

Applicant: Natalija Lace, University of Southern Mississippi, Hattiesburg, MS, PRT-226641

The applicant requests a permit to authorize harassment of captive-held manatees (*Trichechus manatus*) at Lowry Park Zoo, Florida, that are undergoing rehabilitation prior to release back to the wild, for the purpose of scientific research on the effects of underwater sound propagation on manatee sleep patterns. This notification covers activities to be conducted by the applicant over a 1–year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: October 30, 2009.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority

[FR Doc. E9–26874 Filed 11–6–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF JUSTICE

Notice of Extension of Public Comment Period Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that the United States has agreed to extend the public comment period in connection with a proposed Consent Decree in *United States* v. *Pacific Gas & Electric Company* [''PG&E''], Civil Action No. CV–09–4503 (N.D. Cal.), that was lodged with the United States District Court for the Northern District of California on September 24, 2009. The Consent Decree addresses an alleged violation of the Clean Air Act, 42 U.S.C. 7401—7671 *et seq.,* which occurred at the Gateway Generating Station, a natural gas fired power plant located near Antioch, California. The alleged violation arises from the construction of the plant by PG&E allegedly without an appropriate permit in violation of the Prevention of Significant Deterioration provisions of the Clean Air Act, 42 U.S.C. 7475, and without installing and applying best available control technology at the plant to control emissions of various air pollutants.

On October 5, 2009, the United States published a notice in the **Federal Register**, 74 FR 51170, announcing a 30 day public comment period on the proposed settlement. During the comment period, the United States received requests from various citizen groups, including Citizens for a Better Environment, ACORN, and Californians for Renewable Energy, asking the United States to extend the period for the public to submit their comments and to provide to the United States other information that these organizations believe should be considered in connection with the proposed settlement. In light of these requests, the United States has agreed to extend the time for the public to submit comments on the proposed settlement to a date sixty (60) days from the date of publication of this **Federal Register** notice.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to *pubcomment-ees.enrd@usdoj.gov* or in hard copy to the United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611. Comments should refer to *United States* v. *Pacific Gas & Electric Company,* Civil Action No. CV–09–4503 (N.D. Cal.) and D.J. Ref. No. 90–5–2–1–09753.

The Consent Decree may be examined at: (1) The offices of the United States Department of Justice, 301 Howard Street, San Francisco, California 94105; and (2) the offices of the U.S. Environmental Protection Agency, Region 9, 75 Hawthorne St., San Francisco, CA 94105. During the public comment period, the Consent Decree may also be examined on the following Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, 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 $5.25 (21 pages at 25 cents per page reproduction costs) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–26916 Filed 11–6–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on October 30, 2009, a proposed Consent Decree in *United States* v. *Methuen Lube, Inc., et al.*, Civil Action No. 1:09–cv–00368–SM, was lodged with the United States District Court for the District of New Hampshire.

The proposed Consent Decree will settle the United States' claims on behalf of the U.S. Environmental Protection Agency (''EPA'') brought against defendants Methuen Lube, Inc.; Gloucester Marine Railways Corp.; Sarkis and Toris Vorbigian (d/b/a/ THS Auto Service); the Town of Chester, N.H.; the City of East Providence, R.I.; Express Car Care, Inc.; Fraser Pontiac-Buick-GMC, Inc.; Hampden Dodge, Inc.; the City of Haverhill, MA; the City of Haverhill Housing Authority; Hussey Seating; Legendary Lube, Inc.; the Town of Salem, N.H.; and the Salem School District (collectively referred to as ''Settling Defendants'') pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, with respect to the Beede Waste Oil Superfund Site in Plaistow, New Hampshire. Pursuant to the Consent Decree, the Settling Defendants will pay a total of $1,725,435.57 toward financing the work at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent 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 *United States* v. *Methuen Lube, Inc., et al.,* Civil Action No. 1:09–cv–368, D.J. Ref. 90–11–3–07039/13. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, 53 Pleasant Street, Concord, New Hampshire 03301, and at the United States Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. During the public

comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also 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. If requesting a copy by mail from the Consent Decree Library, please enclose a check in the amount of $10.25 ($0.25 per page reproduction cost) payable to the United States Treasury or, if requesting by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–26918 Filed 11–6–09; 8:45 am]

BILLING CODE 4410–15–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 8–09]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Wednesday, November 18, 2009, at 11 a.m.

SUBJECT MATTER: Issuance of Proposed Decisions in claims against Albania and Libya.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Mauricio J. Tamargo,

Chairman.

[FR Doc. E9–27059 Filed 11–5–09; 4:15 pm]

BILLING CODE 4401–BA–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0005]

Avalotis Corp.; Notice of Application for a Permanent Variance and Interim Order, Grant of an Interim Order, and Request for Comments

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Application for a permanent variance and interim order; grant of an interim order.

SUMMARY: Avalotis Corp. (''the applicant'') applied for a permanent variance from the provisions of the OSHA standards that regulate boatswain's chairs and hoist towers, specifically paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. In addition, the applicant requested an interim order based on the alternative conditions specified by the variance application. These alternative conditions consist of the same conditions specified in recent variances granted by OSHA from these hoist-tower and boatswain's-chair provisions, as well as several additional conditions that would provide workers with protection from shearing, fall, and struck-by hazards. Therefore, OSHA is granting the applicant's request for an interim order.

DATES: Comments and requests for a hearing must be submitted (postmarked, sent, or received) by December 9, 2009. The interim order specified by this notice becomes effective on November 9, 2009.

ADDRESSES: *Electronic.* Comments and requests for a hearing may be submitted electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile. OSHA allows facsimile transmission of comments that are 10 pages or fewer in length (including attachments), as well as hearing requests. Send these comments and requests to the OSHA Docket Office at (202) 693–1648; hard copies of these comments are not required. Instead of transmitting facsimile copies of attachments that supplement their comments (*e.g.,* studies and journal articles), commenters may submit these attachments, in triplicate hard copy, to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (*i.e.,* OSHA–2009–0005) so that the Agency can attach them to the appropriate comments.

Regular mail, express delivery, hand (courier) delivery, and messenger service. Submit three copies of comments and any additional material (*e.g.,* studies and journal articles), as well as hearing requests, to the OSHA Docket Office, Docket No. OSHA–2009–0005, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693–2350. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office and Department of Labor are 8:15 a.m. to 4:45 p.m., *e.t.*

Instructions. All submissions must include the Agency name and the OSHA docket number (*i.e.,* OSHA Docket No. OSHA–2009–0005). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials may be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

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FOR FURTHER INFORMATION CONTACT: *General information and press inquiries.* For general information and press inquiries about this notice contact Jennifer Ashley, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.

Technical information. For technical information about this notice, contact

MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, Room N–3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2110; fax: (202) 693–1644. *Copies of this* **Federal Register** *notice.* Electronic copies of this notice are available at *http://www.regulations.gov.* Electronic copies of this notice, as well as news releases and other relevant information, are available on OSHA's Web page at *http://www.osha.gov.*

I. Notice of Application

Avalotis Corp. (''the applicant'') submitted an application for a permanent variance under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11 (''Variances and other relief under section 6(d)'') (*see* Ex. 1—Avalotis Corp. Application).[1] The applicant seeks a permanent variance from 29 CFR 1926.452(o)(3), which provides the tackle requirements for boatswain's chairs. The applicant also requests a variance from paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552 that regulate hoist towers. These latter paragraphs specify the following requirements:

- (c)(1)—Construction requirements for hoist towers outside a structure;
- (c)(2)—Construction requirements for hoist towers inside a structure;
- (c)(3)—Anchoring a hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;
- (c)(8)—Electrically interlocking entrance doors or gates that prevent hoist movement when the doors or gates are open;
- (c)(13)—Emergency stop switch located in the car;
- (c)(14)(i)—Using a minimum of two wire ropes for drum hoisting; and
- (c)(16)—Material and component requirements for construction of personnel hoists.

The applicant contends that the permanent variance would provide its workers with a place of employment that is at least as safe and healthful as they would obtain under the existing provisions. The places of employment affected by this variance application are the present and future projects where the applicant constructs chimneys.

The applicant certifies that it provided employee representatives of current workers who would be affected by the permanent variance with a copy of its variance request. The applicant also certifies that it notified its workers of the variance request by posting a summary of the application and specifying where the workers can examine a copy of the application at prominent locations where they normally post notices to its workers. In addition, the applicant informed workers and their representatives of their right to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on this variance application.

II. Multi-State Variance

The applicant stated that it performs chimney work in a number of States and Territories that operate OSHA-approved safety and health programs under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*). Twenty-seven States and Territories have OSHA-approved safety and health programs.[2] As part of this variance process, the Directorate of Cooperative and State Programs will notify the State-Plan States and Territories of this variance application and advise them that, unless they object, OSHA will assume the State's position regarding this application is the same as its position regarding prior identical variances.

Thirteen States and one Territory have agreed to the terms of the earlier variance requests addressing chimney construction (*i.e.,* Alaska, Arizona, Indiana, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia, and Wyoming). Four States have imposed additional requirements and conditions (*i.e.,* Kentucky, Michigan, South Carolina, and Utah), and four States have objected to the earlier variance requests (*i.e.,* California, Hawaii, Iowa, and Washington). In the eight States that impose additional conditions or have declined the terms of the variance application, employers would have to contact or apply directly to the State-Plan Office and meet State-specific requirements should OSHA grant the variance request. The variance would not be applicable to five State Plans that cover only public-sector workers (*i.e.,* Connecticut, Illinois, New Jersey, New York, and the Virgin Islands), and authority over variances in these States continues to reside with Federal OSHA.

III. Supplementary Information

A. Overview

The applicant constructs remodels, repairs, maintains, inspects, and demolishes tall chimneys made of reinforced concrete, brick, and steel. This work requires the applicant to transport workers and construction material to and from elevated work platforms and scaffolds located, respectively, inside and outside tapered chimneys. While tapering contributes to the stability of a chimney, it requires frequent relocation of, and adjustments to, the work platforms and scaffolds so that they will fit the decreasing circumference of the chimney as construction progresses upwards.

To transport workers to various heights inside and outside a chimney, the applicant proposes to use a hoist system that would lift and lower personnel-transport devices (*i.e.,* personnel cages, personnel platforms, or boatswain's chairs). The applicant also would attach material-transport devices such as hoppers, concrete buckets, or other containers to the hoist system to raise or lower construction material or equipment inside or outside a chimney. The applicant would use personnel cages, personnel platforms, or boatswain's chairs solely to transport workers with the tools and materials necessary to do their work, and *not* to transport only materials or tools in the absence of workers.

B. Previous Variances From 29 CFR 1926.452(o)(3) and 1926.552(c)

Since 1973, a number of chimney construction companies demonstrated to OSHA that several of the hoist-tower requirements of 29 CFR 1926.552(c) present chimney-access problems that pose a serious danger to their workers. These companies received permanent variances from these personnel-hoist and boatswain's-chair requirements, and they used essentially the same alternate apparatus and procedures that the applicant is now proposing to use in this variance application. The Agency published the permanent variances for these companies at 38 FR 8545 (April 3, 1973), 44 FR 51352 (August 31, 1979), 50 FR 20145 (May 14, 1985), 50 FR 40627 (October 4, 1985), 52 FR 22552 (June 12, 1987), 68 FR 52961 (September 8, 2003), 70 FR 72659 (December 6, 2005), 71 FR 10557 (March 1, 2006), 74

[1] The principal address for the applicant is: Avalotis Corp., 400 Jones Street, Verona, PA 15147.

[2] Four State-Plan States (*i.e.,* Connecticut, Illinois, New Jersey, and New York) and one Territory (*i.e.,* Virgin Islands) limit their occupational safety and health authority to public-sector employees only. The 21 State-Plan States and one Territory that have jurisdiction over both public- and private-sector employers and employees are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

FR 34789 (July 17, 2009) and 74 FR 41742 (August 18, 2009).[3]

In 1980, the Agency evaluated the alternative conditions specified in the permanent variances that it granted to chimney construction companies as of that date. In doing so, OSHA observed hoisting operations conducted by these companies at various construction sites. These evaluations found that, while the alternative conditions generally were safe, compliance with the conditions among the companies was uneven (*see* Ex. 2—OSHA Evaluation Report). Additionally, the National Chimney Construction Safety and Health Advisory Committee (NCCSHAC), an industry-affiliated organization, conducted evaluations of the hoist systems that provided useful information regarding the safety and efficacy of the alternative conditions (*see* Ex. 3—NCCSHAC Report).

The permanent variance granted by OSHA to American Boiler and Chimney Co. and Oak Park Chimney Corp. (*see* 68 FR 52961, September 8, 2003) updated the permanent variances granted by the Agency in the 1970s and 1980s by clarifying the alternative conditions and citing the most recent consensus standards and other references. In 2009, OSHA updated a letter of interpretation regarding the provisions that regulate the tackle used for boatswain's chairs (29 CFR 1926.452(o)(3)), as well as the provisions specified for personnel hoists in 29 CFR 1926.552(c)(1) through 1926.552(c)(4), 1926.552(c)(8), 1926.552(c)(13), 1926.552(c)(14)(i), and 1926.552(c)(16). The updates include conditions that the Agency believes are necessary to protect workers from shearing or struck-by hazards associated with using hoist systems in chimney construction (*see* Ex. 4—2009 Revised OSHA Letter of Interpretation). OSHA shared the letter of interpretation with the applicant (*see* Ex. 5—OSHA E-mail to Avalotis Corp.). The applicant reviewed the letter of interpretation and notified OSHA that its application for variance should be amended to include all conditions described in the letter of interpretation (*see* Ex. 6—Avalotis Corp. Letter to OSHA). In this letter, the applicant also requested that its application be amended to include the following conditions, which are included in the most recent variances granted by OSHA: Notify the OSHA Area Office nearest to the worksite, or the appropriate State Plan Office, of the operation prior to commencing any chimney construction operation; and, inform OSHA national headquarters as soon as it has knowledge that it will cease to do business or transfer the activities covered by a granted variance or interim order to a successor company.

On the basis of its experience and knowledge, the Agency finds that the applicant's request for a permanent variance is consistent with the permanent variances that OSHA granted previously to other employers in the chimney construction industry. Therefore, the Agency believes that the conditions specified in this variance application will provide the applicant's workers with at least the same level of safety they would receive from 29 CFR 1926.452(o)(3) and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.

C. Requested Variance From 29 CFR 1926.452(o)(3)

The applicant states that it is necessary, on occasion, to use a boatswain's chair to transport workers to and from a bracket scaffold on the outside of an existing tapered chimney during flue installation or repair work, or to and from an elevated scaffold located inside a chimney that has a tapering diameter. Paragraph (o)(3) of 29 CFR 1926.452, which regulates the tackle used to rig a boatswain's chair, states that this tackle must ''consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced' minimum five-eighth (5/8) inch (1.6 cm) diameter first-grade manila rope [or equivalent rope].''

The primary purpose of this paragraph is to allow a worker to safely control the ascent, descent, and stopping locations of the boatswain's chair. However, the applicant notes that the required tackle is difficult or impossible to operate on some chimneys that are over 200 feet tall because of space limitations. Therefore, as an alternative to complying with the tackle requirements specified by 29 CFR 1926.452(o)(3), the applicant proposes to use the hoisting system described in Section II.E (''Proposed Alternative to 29 CFR 1926.452(o)(3) and 29 CFR 1926.552(c)'') of this notice, both inside and outside a chimney, to raise or lower workers in a personnel cage to work locations. The applicant would use a personnel cage for this purpose to the extent that adequate space is available; it would use a personnel platform whenever a personnel cage is infeasible because of limited space. When limited space makes a personnel platform infeasible, the applicant then would use a boatswain's chair to lift workers to work locations. The applicant would limit use of the boatswain's chair to elevations above the highest work location that the personnel cage and personnel platform can reach; under these conditions, the applicant would attach the boatswain's chair directly to the hoisting cable only when the structural arrangement precludes the safe use of the block and tackle required by 29 CFR 1926.452(o)(3).

D. Requested Variance From 29 CFR 1926.552(c)

Paragraph (c) of 29 CFR 1926.552 specifies the requirements for enclosed hoisting systems used to transport personnel from one elevation to another. This paragraph ensures that employers transport workers safely to and from elevated work platforms by mechanical means during the construction, alteration, repair, maintenance, or demolition of structures such as chimneys. However, this standard does not provide specific safety requirements for hoisting personnel to and from elevated work platforms and scaffolds in tapered chimneys; the tapered design requires frequent relocation of, and adjustment to, the work platforms and scaffolds. The space in a tapered chimney is not large enough or configured so that it can accommodate an enclosed hoist tower. Moreover, using an enclosed hoist tower for outside operations exposes workers to additional fall hazards because extra bridging and bracing must be installed to support a walkway between the hoist tower and the tapered chimney.

Paragraph (c)(1) of 29 CFR 1926.552 requires employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the chimney; these enclosures must extend the full height of the hoist tower. The applicant asserts that it is impractical and hazardous to locate a hoist tower outside tapered chimneys because it becomes increasingly difficult, as a chimney rises, to erect, guy, and brace a hoist tower; under these conditions, access from the hoist tower to the chimney or to the movable scaffolds used in constructing the chimney exposes workers to a serious fall hazard. Additionally, the applicant notes that the requirement to extend the enclosures 10 feet above the outside scaffolds often exposes the workers involved in building these extensions to dangerous wind conditions.

Paragraph (c)(2) of 29 CFR 1926.552 requires that employers enclose all four

[3] Zurn Industries, Inc. received two permanent variances from OSHA. The first variance, granted on May 14, 1985 (50 FR 20145), addressed the boatswain's-chair provision (then in paragraph (l)(5) of § 1926.451), as well as the hoist-tower requirements of paragraphs (c)(1), (c)(2), (c)(3), and (c)(14)(i) of § 1926.552. The second variance, granted on June 12, 1987 (52 FR 22552), included these same paragraphs, as well as paragraphs (c)(4), (c)(8), (c)(13), and (c)(16) of § 1926.552.

sides of a hoist tower even when the tower is located inside a chimney; the enclosure must extend the full height of the tower. The applicant contends that it is hazardous for workers to erect and brace a hoist tower inside a chimney, especially tapered chimneys, because these structures have limited space and cannot accommodate hoist towers; space limitations result from chimney design (*e.g.,* tapering), as well as reinforced steel projecting into the chimney from formwork that is near the work location.

As an alternative to complying with the hoist-tower requirements of 29 CFR 1926.552(c)(1) and (c)(2), the applicant proposes to use the hoist system described below in Section II.E (''Proposed Alternative to 29 CFR 1926.452(o)(3) and 29 CFR 1926.552(c)'') of this notice to transport workers to and from work locations inside and outside chimneys. Use of the proposed hoist system would eliminate the need for the applicant to comply with other provisions of 29 CFR 1926.552(c) that specify requirements for hoist towers. Therefore, the applicant also is requesting a permanent variance from the following related provisions:

- (c)(3)—Anchoring the hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;
- (c)(8)—Electrically interlocking entrance doors or gates that prevent hoist movement when the doors or gates are open;
- (c)(13)—Emergency stop switch located in the car;
- (c)(14)(i)—Using a minimum of two wire ropes for drum-type hoisting; and
- (c)(16)—Material and component requirements for construction of personnel hoists.

The applicant asserts that the proposed hoisting system would protect its workers at least as effectively as the hoist-tower requirements of 29 CFR 1926.552(c).

E. Proposed Alternative to 29 CFR 1926.452(o)(3) and 29 CFR 1926.552(c)

To power the hoist system, the applicant would use a hoist engine, located and controlled outside the chimney. The system also would consist of a wire rope that: spools off the hoist drum into the interior of the chimney; passes to a footblock that redirects the rope from the horizontal to the vertical planes; goes from the footblock through the overhead sheaves above the elevated platform; and finally drops to the bottom landing of the chimney where it connects to a personnel- or material-transport device. The cathead, which is a superstructure at the top of the hoist system, supports the overhead sheaves. The overhead sheaves (and the vertical span of the hoist system) move upward with the hoist system as chimney construction progresses. Two guide cables, suspended from the cathead, eliminate swaying and rotation of the load. If the hoist rope breaks, safety clamps activate and grip the guide cables to prevent the load from falling. The applicant would use a headache ball, located on the hoist rope directly above the load, to counterbalance the rope's weight between the cathead sheaves and the footblock.

The applicant would implement additional conditions to improve worker safety, including:

(1) Attaching the wire rope to the personnel cage using a keyed-screwpin shackle or positive-locking link;

(2) Adding limit switches to the hoist system to prevent overtravel by the personnel- or material-transport devices;

(3) Providing the safety factors and other precautions required for personnel hoists specified by the pertinent provisions of 29 CFR 1926.552(c), including canopies and shields to protect workers located in a personnel cage from material that may fall during hoisting and other overhead activities;

(4) Providing falling-object protection for scaffold platforms as specified by 29 CFR 1926.451(h)(1);

(5) Conducting tests and inspections of the hoist system as required by 29 CFR 1926.20(b)(2) and 1926.552(c)(15);

(6) Establishing an accident prevention program that conforms to 29 CFR 1926.20(b)(3);

(7) Equipping workers who use a personnel cage, personnel platform, or boatswain's chair with, and ensuring that they use, personal fall arrest systems meeting the requirements of 29 CFR 1926.502(d);

(8) Ensuring that workers using a personnel cage secure their personal fall arrest system to an attachment point located inside the cage, and that workers using personnel platforms or boatswain's chairs secure their personal fall arrest systems to a vertical lifeline;

(9) When using vertical lifelines, securing the lifelines to the top of the chimney and weighting the lifelines properly or suitably affixing the lifelines to the bottom of the chimney, and ensuring that workers remain attached to their lifeline during the entire period of vertical transit;

(10) Providing instruction to each worker who uses a personnel platform or boatswain's chair regarding the shearing hazards posed by the hoist system (*e.g.*, work platforms, scaffolds), and the need to keep their limbs or other body parts clear of these hazards during hoisting operations;

(11) Providing the instruction on shearing hazards before a worker uses one of these personnel-transport devices at the worksite; and periodically, and as necessary, thereafter, including whenever the worker demonstrates a lack of knowledge about the hazard or how to avoid it, a modification occurs to an existing shearing hazard, or a new shearing hazard develops at the worksite;

(12) Attaching a readily visible warning to each personnel platform and boatswain's chair notifying workers in a language they understand of potential shearing hazards during hoisting operations. For warnings located on personnel platforms, using the following (or equivalent) wording: ''Warning—To avoid serious injury, keep your hands, arms, feet, legs, and other parts of your body inside this platform while it is in motion.'' For boatswain's chairs, the warning would use the following (or equivalent) wording: ''Warning—To avoid serious injury, do not extend your hands, arms, feet, legs, or other parts of your body from the side or to the front of this chair while it is in motion''; and

(13) Establishing a clearly designated exclusion zone around the hoist system's bottom landing and prohibiting any worker from entering the exclusion zone except to access a personnel cage, personnel platform, boatswain's chair, or material-transport device, and then only when the personnel- and material-transport device is at the bottom landing and not in operation.

In its revised letter of interpretation (*see* Ex. 4—2009 Revised OSHA Letter of Interpretation), OSHA revised the requirements for using personal fall protection systems specified in previous variances addressing these hoist systems (*see* Conditions 7 and 8, above). This revision requires the applicant to provide workers using personnel cages with personal fall protection systems, and to ensure that the workers use these systems in accordance with 29 CFR 1926.502(d). OSHA believes this revision will protect workers from falling out of a personnel cage in the event the door of the cage opens inadvertently during lifting operations.

Conditions 10–13 are new conditions that were added when OSHA revised its letter of interpretation. OSHA believes that these additional conditions are necessary to protect workers from shearing, fall, and struck-by hazards associated with using hoist systems in chimney construction. Accordingly, conditions 10–12 address shearing hazards that workers may encounter while a personnel platform or

boatswain's chair is transporting them to or from an elevated jobsite. During transport, the personnel-transport device will pass near structures, including work platforms and scaffolds that could crush or inflict other serious injury on a hand, arm, foot, leg, or other body part that extends beyond the confines of the device. To prevent these injuries, OSHA believes that workers who use these devices must be able to recognize shearing hazards at the worksite, and how to avoid them. Additionally, attaching a readily visible warning of the hazards to personnel platforms and boatswain's chairs would supplement and reinforce the hazard training by reminding workers of the hazard and how to avoid it.

The last condition (Condition 13) requires the applicant to establish an exclusion zone around the bottom landing where workers access personnel- and material-transport devices. The applicant must ensure that workers enter the exclusion zone only to access a transport device that is in the area circumscribed by the exclusion zone, and only when the hoist system is not in operation. This condition will prevent a transport device that is descending from an elevated jobsite from striking a worker who is in or near the bottom-landing area and is not aware of the descending device. During descent, it also is difficult for workers in or on these devices to detect a worker beneath them. Therefore, it is necessary for the applicant to establish an exclusion zone and ensure that workers only enter the exclusion zone when a transport device is at the bottom landing and not in operation (*i.e.*, the drive components of the hoist system are disengaged and the braking mechanism is properly applied).

In its letter (Ex. 6—Avalotis Corp. Letter to OSHA), the applicant agreed to adopt all the conditions specified in the August 18, 2009 letter of interpretation, and also indicated that it would adopt conditions that require the applicant to notify (1) the nearest OSHA Area Office, or appropriate State Plan Office, at least 15 days before commencing chimney construction operations covered by the variance application, and (2) OSHA national headquarters as soon as an applicant knows that it will cease doing business or transfers the activities covered by the variance to another company. OSHA believes that these notification requirements would improve administrative oversight of the variance program, thereby enhancing worker safety and reducing its administrative burden.

III. Grant of Interim Order

In addition to requesting a permanent variance, the applicant also requested an interim order that would remain in effect until the Agency makes a decision on its application for a permanent variance. During this period, the applicant must comply fully with the conditions of the interim order as an alternative to complying with the tackle requirements provided for boatswain's chairs by 29 CFR 1926.452(o)(3) and the requirements for hoist towers specified by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.

Based on its previous experience with permanent variances from these provisions granted to other companies, OSHA believes that an interim order is justified in this case. As noted above in Section II.B (''Previous Variances from 29 CFR 1926.452(o)(3) and 1926.552(c)'') of this notice, the Agency has granted a number of permanent variances from these provisions since 1973. Over this period, the affected companies have effectively used the alternative conditions specified in the variances. The conditions of the interim order requested by the applicant substantially duplicate the conditions approved recently in the permanent variance granted to American Boiler and Chimney Co. and Oak Park Chimney Corp. (*see* 68 FR 52961), while adding conditions that would provide workers with protection from shearing, fall, and struck-by hazards. In granting a permanent variance to American Boiler and Chimney Co. and Oak Park Chimney Corp., the Agency stated, ''[W]hen the employers comply with the conditions of the following order, their workers will be exposed to working conditions that are at least as safe and healthful as they would be if the employers complied with paragraph (o)(3) of 29 CFR 1926.452, and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.'' (*See* 68 FR 52967.)

Based on its determination that the alternative conditions proposed by American Boiler and Chimney Co. and Oak Park Chimney Corp. will protect workers at least as effectively as the requirements of paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552, as well as the additional conditions specified in this variance application that will protect workers from shearing, fall, and struck-by hazards, OSHA has decided to grant an interim order to the applicant pursuant to the provisions of 29 CFR 1905.11(c). Accordingly, in lieu of complying with paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552, the applicant will: (1) Provide notice of this grant of an interim order to the workers affected by the conditions of the interim order using the same means it used to inform these workers of their applications for a permanent variance; and (2) comply with the conditions listed below in Section IV (''Specific Conditions of the Interim Order and the Application for a Permanent Variance'') of this application for the period between the date of this **Federal Register** notice and the date the Agency publishes its final decision on the application in the **Federal Register**; the interim order will remain in effect during this period unless OSHA modifies or revokes it in accordance with the requirements of 29 CFR 1905.13.

IV. Specific Conditions of the Interim Order and the Application for a Permanent Variance

The following conditions apply to the interim order being granted by OSHA to Avalotis Corp. as part of its application for a permanent variance described in this **Federal Register** notice. In addition, these conditions specify the alternatives to the requirements of paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552 that the applicant is proposing in its application for a permanent variance. These conditions include:[4]

1. Scope

(a) The interim order/permanent variance applies/would apply only to tapered chimneys when the applicant uses a hoist system during inside or outside chimney construction to raise or lower its workers between the bottom landing of a chimney and an elevated work location on the inside or outside surface of the chimney.

(b) When using a hoist system as specified in this interim order/permanent variance, the applicant must/would:

(i) Use the personnel cages, personnel platforms, or boatswain's chairs raised and lowered by the hoist system solely to transport workers with the tools and materials necessary to do their work; and

(ii) Attach a hopper or concrete bucket to the hoist system to raise and

[4] In these conditions, the verb ''must'' applies to the interim order, while the verb ''would'' pertains to the application for a permanent variance.

lower all other materials and tools inside or outside a chimney.

(c) Except for the requirements specified by 29 CFR 1926.452(o)(3) and 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16), the applicant must/would comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926.

2. Replacing a Personnel Cage With a Personnel Platform or a Boatswain's Chair

(a) *Personnel platform*. When the applicant demonstrates that available space makes a personnel cage for transporting workers infeasible, it may replace the personnel cage with a personnel platform when it limits use of the personnel platform to elevations above the last work location that the personnel cage can reach.

(b) *Boatswain's chair*. The applicant must/would:

(i) Before using a boatswain's chair, demonstrate that available space makes it infeasible to use a personnel platform for transporting workers;

(ii) Limit use of a boatswain's chair to elevations above the last work location that the personnel platform can reach; and

(iii) Use a boatswain's chair in accordance with block-and-tackle requirements specified by 29 CFR 1926.452(o)(3), unless it can demonstrate that the structural arrangement of the chimney precludes such use.

3. Qualified Competent Person

(a) The applicant must/would:

(i) Provide a qualified competent person, as specified in paragraphs (f) and (m) of 29 CFR 1926.32, who is responsible for ensuring that the design, maintenance, and inspection of the hoist system comply with the conditions specified herein and with the appropriate requirements of 29 CFR part 1926 (''Safety and Health Regulations for Construction''); and

(ii) Ensure that the qualified competent person is present at ground level to assist in an emergency whenever the hoist system is raising or lowering workers.

(b) The applicant must/would use a qualified competent person to design and maintain the cathead described under Condition 8 (''Cathead and Sheave'') below.

4. Hoist Machine

(a) *Type of hoist*. The applicant must/would designate the hoist machine as a portable personnel hoist.

(b) *Raising or lowering a transport*. The applicant must/would ensure that:

(i) The hoist machine includes a base-mounted drum hoist designed to control line speed; and

(ii) Whenever it raises or lowers a personnel or material hoist (*e.g.*, a personnel cage, personnel platform, boatswain's chair, hopper, concrete bucket) using the hoist system:

(A) The drive components are engaged continuously when an empty or occupied transport is being lowered (*i.e.*, no ''freewheeling'');

(B) The drive system is interconnected, on a continuous basis, through a torque converter, mechanical coupling, or an equivalent coupling (*e.g.*, electronic controller, fluid clutches, hydraulic drives);

(C) The braking mechanism is applied automatically when the transmission is in the neutral position and a forward-reverse coupling or shifting transmission is being used; and

(D) No belts are used between the power source and the winding drum.

(c) *Power source*. The applicant must/would power the hoist machine by an air, electric, hydraulic, or internal-combustion drive mechanism.

(d) *Constant-pressure control switch*. The applicant must/would:

(i) Equip the hoist machine with a hand- or foot-operated constant-pressure control switch (*i.e.*, a ''deadman control switch'') that stops the hoist immediately upon release; and

(ii) Protect the control switch to prevent it from activating if the hoist machine is struck by a falling or moving object.

(e) *Line-speed indicator*. The applicant must/would:

(i) Equip the hoist machine with an operating line-speed indicator maintained in proper working order; and

(ii) Ensure that the line-speed indicator is in clear view of the hoist operator during hoisting operations.

(f) *Braking systems*. The applicant must/would equip the hoist machine with two (2) independent braking systems (*i.e.,* one automatic and one manual) located on the winding side of the clutch or couplings, with each braking system being capable of stopping and holding 150 percent of the maximum rated load.

(g) *Slack-rope switch*. The applicant must/would equip the hoist machine with a slack-rope switch to prevent rotation of the winding drum under slack-rope conditions.

(h) *Frame*. The applicant must/would ensure that the frame of the hoist machine is a self-supporting, rigid, welded-steel structure, and that holding brackets for anchor lines and legs for anchor bolts are integral components of the frame.

(i) *Stability*. The applicant must/would secure hoist machines in position to prevent movement, shifting, or dislodgement.

(j) *Location*. The applicant must/would:

(i) Locate the hoist machine far enough from the footblock to obtain the correct fleet angle for proper spooling of the cable on the drum; and

(ii) Ensure that the fleet angle remains between one-half degree (½°) and one and one-half degrees (1½°) for smooth drums, and between one-half degree (½°) and two degrees (2°) for grooved drums, with the lead sheave centered on the drum.[5]

(k) *Drum and flange diameter*. The applicant must/would:

(i) Provide a winding drum for the hoist that is at least 30 times the diameter of the rope used for hoisting; and

(ii) Ensure that the winding drum has a flange diameter that is at least one and one-half (1–½) times the winding-drum diameter.

(l) *Spooling of the rope*. The applicant must/would *never* spool the rope closer than two (2) inches (5.1 cm) from the outer edge of the winding-drum flange.

(m) *Electrical system*. The applicant must/would ensure that all electrical equipment is weatherproof.

(n) *Limit switches*. The applicant must/would equip the hoist system with limit switches and related equipment that automatically prevent overtravel of a personnel cage, personnel platform, boatswain's chair, or material-transport device at the top of the supporting structure and at the bottom of the hoistway or lowest landing level.

5. Methods of Operation

(a) *Worker qualifications and training*. The applicant must/would:

(i) Ensure that only trained and experienced workers, who are knowledgeable of hoist-system operations, control the hoist machine; and

(ii) Provide instruction, periodically and as necessary, on how to operate the hoist system to each worker who uses a personnel cage, personnel platform, or boatswain's chair for transportation.

(b) *Speed limitations*. The applicant must/would *not* operate the hoist at a speed in excess of:

[5] This provision adopts the definition of, and specifications for, fleet angle from *Cranes and Derricks*, H. I. Shapiro, et al. (eds.); New York: McGraw-Hill; 3rd ed., 1999, page 592. Accordingly, the fleet angle is ''[t]he angle the rope leading onto a [winding] drum makes with the line perpendicular to the drum rotating axis when the lead rope is making a wrap against the flange.''

(i) Two hundred and fifty (250) feet (76.9 m) per minute when a personnel cage is being used to transport workers;

(ii) One hundred (100) feet (30.5 m) per minute when a personnel platform or boatswain's chair is being used to transport workers; or

(iii) A line speed that is consistent with the design limitations of the system when only material is being hoisted (*i.e.*, using a dedicated material-transport device such as a hopper or concrete bucket).

(c) *Communication.* The applicant must/would:

(i) Use an electronic voice-communication system to maintain communication between the hoist operator and the workers located in or on a moving personnel cage, personnel platform, or boatswain's chair;

(ii) Stop hoisting if, for any reason, the communication system fails to operate effectively; and

(iii) Resume hoisting only when the worksite superintendent determines that it is safe to do so.

6. Hoist Rope

(a) *Grade.* The applicant must/would use a wire rope for the hoist system (*i.e.*, ''hoist rope'') that consists of extra-improved plow steel, an equivalent grade of non-rotating rope, or a regular lay rope with a suitable swivel mechanism.

(b) *Safety factor.* The applicant must/would maintain a safety factor of at least eight (8) times the safe workload throughout the entire length of hoist rope.

(c) *Size.* The applicant must/would use a hoist rope that is at least one-half (½) inch (1.3 cm) in diameter.

(d) *Inspection, removal, and replacement.* The applicant must/would:

(i) Thoroughly inspect the hoist rope before the start of each job and on completing a new setup;

(ii) Maintain the proper diameter-to-diameter ratios between the hoist rope and the footblock and the sheave by inspecting the wire rope regularly (*see* Conditions 7(c) and 8(d), below); and

(iii) Remove and replace the wire rope with new wire rope when any condition specified by 29 CFR 1926.552(a)(3) occurs.

(e) *Attachments.* The applicant must/would attach the rope to a personnel cage, personnel platform, or boatswain's chair with a keyed-screwpin shackle or positive-locking link.

(f) *Wire-rope fastenings.* When the applicant uses clip fastenings (*e.g.,* U-bolt wire-rope clips) with wire ropes, it must/would:

(i) Use Table H–20 of 29 CFR 1926.251 to determine the number and spacing of clips;

(ii) Use at least three (3) drop-forged clips at each fastening;

(iii) Install the clips with the ''U'' of the clips on the dead end of the rope; and

(iv) Space the clips so that the distance between them is six (6) times the diameter of the rope.

7. Footblock

(a) *Type of block.* The applicant must/would use a footblock:

(i) Consisting of construction-type blocks of solid single-piece bail with a safety factor that is at least four (4) times the safe workload, or an equivalent block with roller bearings;

(ii) Designed for the applied loading, size, and type of wire rope used for hoisting;

(iii) Designed with a guard that contains the wire rope within the sheave groove;

(iv) Bolted rigidly to the base; and

(v) Designed and installed so that it turns the moving wire rope to and from the horizontal or vertical direction as required by the direction of rope travel.

(b) *Directional change.* The applicant must/would ensure that the angle of change in the hoist rope from the horizontal to the vertical direction at the footblock is approximately 90°.

(c) *Diameter.* The applicant must/would ensure that the line diameter of the footblock is at least 24 times the diameter of the hoist rope.

8. Cathead and Sheave

(a) *Support.* The applicant must/would use a cathead (*i.e.,* ''overhead support'') that consists of a wide-flange beam, or two (2) steel-channel sections securely bolted back-to-back to prevent spreading.

(b) *Installation.* The applicant must/would ensure that:

(i) All sheaves revolve on shafts that rotate on bearings; and

(ii) The bearings are mounted securely to maintain the proper bearing position at all times.

(c) *Rope guides.* The applicant must/would provide each sheave with appropriate rope guides to prevent the hoist rope from leaving the sheave grooves when the rope vibrates or swings abnormally.

(d) *Diameter.* The applicant must/would use a sheave with a diameter that is at least 24 times the diameter of the hoist rope.

9. Guide Ropes

(a) *Number and construction.* The applicant must/would affix two (2) guide ropes by swivels to the cathead. The applicant must/would ensure that the guide ropes:

(i) Consist of steel safety cables not less than one-half (½) inch (1.3 cm) in diameter; and

(ii) Be free of damage or defect at all times.

(b) *Guide rope fastening and alignment tension.* The applicant must/would fasten one end of each guide rope securely to the overhead support, with appropriate tension applied at the foundation.

(c) *Height.* The applicant must/would rig the guide ropes along the entire height of the hoist-machine structure.

10. Personnel Cage

(a) *Construction.* The applicant must/would ensure that the personnel cage is of steel-frame construction and capable of supporting a load that is four (4) times its maximum rated load capacity. The applicant also must/would ensure that the personnel cage has:

(i) A top and sides that are permanently enclosed (except for the entrance and exit);

(ii) A floor securely fastened in place;

(iii) Walls that consist of 14-gauge, one-half (½) inch (1.3 cm) expanded metal mesh, or an equivalent material;

(iv) Walls that cover the full height of the personnel cage between the floor and the overhead covering;

(v) A sloped roof constructed of one-eighth (⅛) inch (0.3 cm) aluminum, or an equivalent material;

(vi) Safe handholds (*e.g.,* rope grips—but *not* rails or hard protrusions [6]) that accommodate each occupant; and

(v) Attachment points to which workers must/would secure their personal fall protection systems.

(b) *Overhead weight.* The applicant must/would ensure that the personnel cage has an overhead weight (*e.g.,* a headache ball of appropriate weight) to compensate for the weight of the hoist rope between the cathead and footblock. In addition, the applicant must/would:

(i) Ensure that the overhead weight is capable of preventing line run; and

(ii) Use a means to restrain the movement of the overhead weight so that the weight does not interfere with safe personnel hoisting.

(c) *Gate.* The applicant must/would ensure that the personnel cage has a gate that:

(i) Guards the full height of the entrance opening; and

(ii) Has a functioning mechanical lock that prevents accidental opening.

(d) *Operating procedures.* The applicant must/would post the

[6] To reduce impact hazards should workers lose their balance because of cage movement.

procedures for operating the personnel cage conspicuously at the hoist operator's station.

(e) *Capacity.* The applicant must/would:

(i) Hoist no more than four (4) occupants in the cage at any one time; and

(ii) Ensure that the rated load capacity of the cage is at least 250 pounds (113.4 kg) for each occupant so hoisted.

(f) *Worker notification.* The applicant must/would post a sign in each personnel cage notifying workers of the following conditions:

(i) The standard rated load, as determined by the initial static drop test specified by Condition 10(g) (''Static drop tests''), below; and

(ii) The reduced rated load for the specific job.

(g) *Static drop tests.* The applicant must/would:

(i) Conduct static drop tests of each personnel cage that comply with the definition of ''static drop test'' specified by section 3 (''Definitions'') and the static drop test procedures provided in Section 13 (''Inspections and Tests'') of American National Standards Institute (ANSI) standard A10.22–1990 (R1998) (''American National Standard for Rope-Guided and Non-Guided Worker's Hoists—Safety Requirements'');

(ii) Perform the initial static drop test at 125 percent of the maximum rated load of the personnel cage, and subsequent drop tests at no less than 100 percent of its maximum rated load; and

(iii) Use a personnel cage for raising or lowering workers only when no damage occurred to the components of the cage as a result of the static drop tests.

11. Safety Clamps

(a) *Fit to the guide ropes.* The applicant must/would:

(i) Fit appropriately designed and constructed safety clamps to the guide ropes; and

(ii) Ensure that the safety clamps do not damage the guide ropes when in use.

(b) *Attach to the personnel cage.* The applicant must/would attach safety clamps to each personnel cage for gripping the guide ropes.

(c) *Operation.* The applicant must/would ensure that the safety clamps attached to the personnel cage:

(i) Operate on the ''broken rope principle'' defined in section 3 (''Definitions'') of ANSI standard A10.22–1990 (R1998);

(ii) Be capable of stopping and holding a personnel cage that is carrying 100 percent of its maximum rated load and traveling at its maximum allowable speed if the hoist rope breaks at the footblock; and

(iii) Use a pre-determined and pre-set clamping force (*i.e.,* the ''spring compression force'') for each hoist system.

(d) *Maintenance.* The applicant must/would keep the safety clamp assemblies clean and functional at all times.

12. Overhead Protection

(a) The applicant must/would install a canopy or shield over the top of the personnel cage that is made of steel plate at least three-sixteenth (3/16) of an inch (4.763 mm) thick, or material of equivalent strength and impact resistance, to protect workers (*i.e.,* both inside and outside the chimney) from material and debris that may fall from above.

(b) The applicant must/would ensure that the canopy or shield slopes to the outside of the personnel cage.

13. Emergency-Escape Device

(a) *Location.* For workers using a personnel cage, the applicant must/would provide an emergency-escape device in at least one of the following locations:

(i) In the personnel cage, provided that the device is long enough to reach the bottom landing from the highest possible escape point; or

(ii) At the bottom landing, provided that a means is available in the personnel cage for the occupants to raise the device to the highest possible escape point.

(b) *Operating instructions.* The applicant must/would ensure that written instructions for operating the emergency-escape device are attached to the device.

(c) *Training.* The applicant must/would instruct each worker who uses a personnel cage for transportation on how to operate the emergency-escape device:

(i) Before the worker uses a personnel cage for transportation; and

(ii) Periodically, and as necessary, thereafter.

14. Personnel Platforms

When the applicant elects to replace the personnel cage with a personnel platform in accordance with Condition 2(a), above, they must/would:

(a) Ensure that an enclosure surrounds the platform, and that this enclosure is at least 42 inches (106.7 cm) above the floor of the platform;

(b) Provide overhead protection when an overhead hazard is, or could be, present; and

(c) Comply with the applicable scaffolding strength requirements specified by 29 CFR 1926.451(a)(1).

15. Protecting Workers From Fall and Shearing Hazards

(a) *Fall hazards.* The applicant must/would:

(i) Before workers use personnel cages, personnel platforms, or boatswain's chairs, equip the workers with, and ensure that they use, personal fall arrest systems that meet the requirements of 29 CFR 1926.502(d);

(ii) Ensure that workers using personnel cages secure their personal fall arrest systems to attachment points located inside the cage;

(iii) Ensure that workers using personnel platforms and boatswain's chairs secure their personal fall arrest systems to a vertical lifeline; and

(iv) When using vertical lifelines:

(A) Secure the lifelines to the top of the chimney;

(B) Weight the lifelines properly or suitably affix the lifelines to the bottom of the chimney; and

(C) Ensure that workers remain attached to their lifeline during the *entire* period of vertical transit.

(b) *Shearing hazards.* The applicant must/would:

(i) Provide workers who use personnel platforms or boatswain's chairs with instruction on the shearing hazards posed by the hoist system (*e.g.,* work platforms, scaffolds), and the need to keep their limbs or other body parts clear of these hazards during hoisting operations;

(ii) Provide the instruction on shearing hazards:

(A) Before a worker uses a personnel platform or boatswain's chair at the worksite; and

(B) Periodically, and as necessary, thereafter, including whenever a worker demonstrates a lack of knowledge about the hazard or how to avoid it, a modification occurs to an existing shearing hazard, or a new shearing hazard develops at the worksite; and

(iii) Attach a readily visible warning to each personnel platform and boatswain's chair notifying workers in a language they understand of potential shearing hazards they may encounter during hoisting operations, and that uses the following (or equivalent) wording:

(A) For personnel platforms: ''Warning—To avoid serious injury, keep your hands, arms, feet, legs, and other parts of your body inside this platform while it is in motion''; and

(B) For boatswain's chairs: ''Warning—To avoid serious injury, do not extend your hands, arms, feet, legs,

or other parts your body from the side or to the front of this chair while it is in motion.''

16. Exclusion Zone

The applicant must/would:

(a) Establish a clearly designated exclusion zone around the bottom landing of the hoist system; and

(b) Prohibit any worker from entering the exclusion zone except to access a personnel- or material-transport device, and then only when the device is at the bottom landing and not in operation (*i.e.,* when the drive components of the hoist machine are disengaged and the braking mechanism is properly applied).

17. Inspections, Tests, and Accident Prevention

(a) The applicant must/would:

(i) Conduct inspections of the hoist system as required by 29 CFR 1926.20(b)(2);

(ii) Ensure that a competent person conducts daily visual inspections of the hoist system; and

(iii) Inspect and test the hoist system as specified by 29 CFR 1926.552(c)(15).

(b) The applicant must/would comply with the accident prevention requirements of 29 CFR 1926.20(b)(3).

18. Welding

(a) The applicant must/would ensure that only qualified welders weld components of the hoisting system.

(b) The applicant must/would ensure that the qualified welders:

(i) Are familiar with the weld grades, types, and materials specified in the design of the system; and

(ii) Perform the welding tasks in accordance with 29 CFR part 1926, subpart J (''Welding and Cutting'').

19. OSHA Notification

(a) At least 15 calendar days prior to commencing any chimney construction operation using the conditions specified herein, the applicant must/would notify the OSHA Area Office nearest to the worksite, or the appropriate State Plan Office, of the operation, including the location of the operation and the date the operation will commence;

(b) The applicant must/would inform OSHA national headquarters as soon as it has knowledge that it will:

(i) Cease to do business; or

(ii) Transfer the activities covered by this permanent variance to a successor company.

V. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC directed the preparation of this notice. This notice is issued under the authority specified by Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR part 1905.

Signed at Washington, DC, on November 2, 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–26930 Filed 11–6–09; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–094)]

NASA International Space Station Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NASA International Space Station Advisory Committee.

DATES: December 11, 2009, 1–2 p.m. Eastern Standard Time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., Room 7H45, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. J. Donald Miller, Office of External Relations, (202) 358–1527, National Aeronautics and Space Administration, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. Five seats will be reserved for members of the press. The purpose of the meeting is to assess NASA and Roscosmos plans to support a six-person crew aboard the International Space Station, including transportation, crew rotation, training, and micro meteoroid and orbital debris shielding. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees should provide identifying information in advance by contacting Dr. Miller via e-mail at *j.d.miller@nasa.gov* or by telephone at (202) 358–1527 by December 2, 2009.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: November 3, 2009.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–26907 Filed 11–6–09; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9068; NRC–2009–0391]

Notice of Availability of Draft Environmental Assessment and Opportunity To Provide Comments for Exemption Request for Lost Creek ISR, LLC, Sweetwater County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

DATES: Comments regarding this draft Environmental Assessment must be received by December 9, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen J. Cohen, Team Leader, Uranium Recovery Licensing Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC, 20555. Telephone: (301) 401–7182; fax number: (301) 415–5369; e-mail: *stephen.cohen@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) staff, pursuant to 10 CFR 51.33, is publishing a draft environmental assessment (EA) for public review and comment. The draft EA pertains to the planned issuance of an exemption from the commencement of construction requirements in 10 CFR 40.32(e) to Lost Creek ISR, LLC. The request for this exemption was submitted to the NRC staff on July 2, 2009. Also pending before the NRC is Lost Creek's earlier license application for authorization to operate an in situ recovery (ISR) uranium milling facility in Sweetwater County, Wyoming. Issuance of the

requested exemption would authorize Lost Creek ISR, LLC to conduct certain site preparation activities at, and in, the vicinity of its proposed ISR site. Based on the draft EA, presented below, the NRC staff proposes to make a Finding of No Significant Impact (FONSI) regarding the requested exemption.

Draft Environmental Assessment

1.0 Introduction

By letter dated July 2, 2009, Lost Creek ISR, LLC (the Applicant) submitted an exemption request (LCI, 2009) to the NRC. The Applicant seeks an exemption from the ''commencement of construction'' provisions of 10 CFR 40.32(e) for certain activities described in its exemption request. The Applicant had initially submitted an application for a new source material license on October 30, 2007 (LCI, 2007), for a proposed in situ recovery (ISR) facility in Sweetwater County, Wyoming. After being withdrawn, the application for authorization to conduct uranium milling operations was resubmitted on March 28, 2008, and is still under NRC review (LCI, 2008).

The NRC staff is considering issuing an exemption to the Applicant that would grant the July 2, 2009, request, in part. The exemption would authorize the Applicant to undertake certain site preparation activities for its proposed Lost Creek ISR operations before a decision is made on whether to authorize uranium milling. Granting this exemption would not mean that the NRC has decided to issue an operating license to the Applicant. The Applicant would be undertaking these site preparation activities with the risk that its license application may later be denied. The NRC has prepared a draft EA in support of this exemption in accordance with the requirements of 10 CFR 51.21. The EA contains the information required by 10 CFR 51.30(a). Based on this EA, the NRC is proposing to make a FONSI regarding the exemption request.

2.0 Background

On October 9, 2007, the NRC published its limited work authorization (LWA) regulations for nuclear power plants (72 FR 57416). As part of this final rule, a definition of construction was added to 10 CFR 51.4. Site preparation activities that were deemed not to have a direct nexus to radiological health and safety were listed in 10 CFR 51.4 as activities not included within the ''construction'' definition. On this point, 10 CFR 51.4 states, in relevant part, that ''construction'' does not include:

- Site exploration, including necessary borings to determine foundation conditions or other reconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;
- Preparation of a site for construction of a facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;
- Erection of fences and other access control measures;
- Excavation;
- Erection of support buildings (such as, construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;
- Building of service facilities, such as paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines;

However, the LWA rule did not make a corresponding change to 10 CFR Part 40. Thus, in contrast to the above portions of 10 CFR 51.4, 10 CFR 40.32(e) states that, with some limited exceptions, ''commencement of construction'' prior to license issuance is grounds for license denial. Section 40.32(e) states, in relevant part, as follows:

> The term ''commencement of construction'' means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, roads necessary for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

While this inconsistency in the regulations exists, the NRC staff will review exemption requests to consider whether site preparation activities will be permitted before an operating license is issued.

3.0 Proposed Action

The NRC proposes to grant an exemption that will allow the Applicant to conduct certain site preparation activities that are currently allowed under 10 CFR 51.4, notwithstanding the 10 CFR 40.32(e) provisions discussed above. The scope of the Applicant's July 2 exemption request includes the following 10 items. The NRC staff, as part of its safety review of the request, is considering approving each item on the list as an exempted activity, except for part of Item 2 and all of Item 9.

1. Leveling and surfacing of the area around the plant and maintenance building.
2. Construction of the plant and maintenance buildings—maintenance building construction as approved by the NRC staff. Construction of the plant would not be approved because this activity does not meet the definition of any activity not considered ''construction'' under 10 CFR 51.4.
3. Install household septic systems for the plant and maintenance buildings.
4. Install fence around the plant and maintenance building area.
5. Upgrade existing road access from the west to the plant.
6. Upgrade existing road access from the east to the plant.
7. Install fence for early wellfield area.
8. Install power line to the plant and maintenance buildings and drillers shed.
9. Drill and vase up to four deep wells—This activity would not be approved by NRC staff because this activity has a direct nexus to radiological safety and is, therefore, considered ''construction'' under 10 CFR 51.4.
10. Construct a drillers shed and staging area.

4.0 Purpose and Need for the Proposed Action

As indicated by the above list, the Applicant seeks permission to engage in certain site preparation activities before it is authorized to conduct uranium milling operations. The NRC staff proposes to grant the exemption request, in part, and allow the Applicant to begin site preparation activities.

5.0 Scope of Review

This EA is being prepared pursuant to 10 CFR 51.21, which states, ''[a]ll licensing and regulatory actions subject to this subpart require an environmental assessment * * *.'' The only two exceptions to this rule are those actions requiring environmental impact statements, and those that are categorically excluded or identified as otherwise not requiring environmental review pursuant to 10 CFR 51.22. Exemptions are not currently covered by any categorical exclusion, and, therefore, an EA is required for this action.

6.0 Alternatives

The staff considered two alternatives in this EA, granting the request (the proposed action) and not granting the

request (the no action alternative). The no action alternative is to not grant the exemption and not allow the Applicant to engage in any site preparation activities before an operating license is issued. If the NRC does not grant the exemption, the Applicant would need to wait until a decision is made on its license application request.

7.0 Impacts of the No-Action Alternative

There are no environmental impacts of not granting the exemption.

8.0 Impacts of the Proposed Action

In preparing this EA, the NRC staff reviewed the Applicant's exemption request to determine if the requested activities fall within one of the categories of site preparation activities that are not ''construction'' under 10 CFR 51.4. As indicated in Sections 2.0 and 3.0, the staff intends to exempt only those activities that, pursuant to 10 CFR 51.4, are not ''construction.'' The impacts of those activities allowed by this exemption, which are not considered to be ''construction'' under 10 CFR 51.4, are not evaluated in this EA. However, as reflected in Section 12 below, the staff plans to condition any exemption approval so as to protect endangered species and cultural and historic resources from the effects of site preparation activities.

The impacts of all site preparation activities will be evaluated as cumulative impacts in the supplemental environmental impact statement (SEIS) being prepared for this site. The NRC staff expects to issue the draft SEIS for comment in December 2009.

9.0 Other Federal and State Agencies

Several regulatory agencies will be directly involved with the review and approval of site preparation activities at the proposed Lost Creek project, as well as later construction activities. The U.S. Bureau of Land Management (BLM) will require that a Plan of Operations and associated EA be submitted and approved before allowing any disturbance greater than five (5) acres. Part of this process entails a bond estimate to be submitted to BLM for approval. BLM currently oversees the protection of cultural resources and will continue to do so under all future construction and operation activities.

The Wyoming Department of Environmental Quality (WDEQ) will also have significant oversight of the construction activities through its mine permit process. The Permit to Mine application submitted to WDEQ in December 2007, describes the facility as it is intended to be constructed. The site preparation activities described in the July 2 exemption request will not commence until the Permit to Mine is issued by WDEQ, or unless such activities are approved as part of a Drill Notification or other authorization. The Applicant expects the Permit to Mine to be issued by the WDEQ in November of 2009.

10.0 Agencies Consulted

The NRC staff is currently consulting with the Wyoming State Historic Preservation Office, the U.S. Fish and Wildlife Service (FWS), the BLM, and the WDEQ regarding the site preparation activities discussed in this EA.

11.0 Conclusions

This EA meets the requirements of 10 CFR 51.21. The purpose of this review was to describe the proposed action and alternatives to the proposed action. Impacts associated with the site preparation activities not considered to be part of ''construction'' per 10 CFR 51.4 have not been evaluated for the reasons discussed above. The NRC staff concludes there will be no significant NEPA impacts caused by the action considered in this EA, because none of the activities approved by this action are considered ''construction'' under 10 CFR 51.4 for purposes of Part 51 environmental analyses. Additionally, as reflected below, the staff's approval will be conditioned to ensure that endangered species and cultural and historic resources are protected.

12.0 Protective Conditions

As part of its safety review of the July 2 exemption request, the NRC staff plans to condition any exemption approval to ensure that endangered species and cultural and historic resources are protected. As drafted, these conditions include the following:

1. All construction associated with the proposed development will be completed in compliance with the National Historic Preservation Act of 1966 (as amended) and its implementing regulations (36 CFR Part 800), and the Archaeological Resources Protection Act of 1979 (as amended) and its implementing regulations (43 CFR Part 7). In order to ensure that no unapproved disturbance of cultural resources occurs, any work resulting in the discovery of previously unknown cultural artifacts shall cease. The artifacts shall be inventoried and evaluated in accordance with 36 CFR Part 800, and no disturbance shall occur until the Applicant has received authorization from NRC to proceed.

2. The Applicant will adhere to all construction restrictions required by the WDEQ, BLM, and FWS regarding disturbances to endangered species habitat.

13.0 References

Lost Creek ISR, LLC; Application for a Source Materials License; October 30, 2007; (ADAMS Accession No. ML073190539).

Lost Creek ISR, LLC; Resubmitted Application for a Source Materials License; March 20, 2008; (ADAMS Accession No. ML081060525).

Lost Creek ISR, LLC; Exemption Request to Allow Pre-Licensing Activities; (ADAMS Accession No. ML091940438).

End of Draft Environmental Assessment

ADDRESSES: The NRC is requesting comments regarding this draft EA. Comments must be submitted or postmarked by December 9, 2009. Please include Docket ID NRC–2009–0040–9068 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. 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. You may submit comments in the following manner:

Electronic Filing through Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0391. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

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

NRC's Public Document Room (PDR): The public may examine and have

copied for a fee publicly available documents at the NRC's PDR, Public File Area 01 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The Lost Creek ISR, LLC exemption request is available electronically under ADAMS Accession Number ML091940438.

Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0391. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of November 2009.

For the U.S. Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–26908 Filed 11–6–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0226]

Office of New Reactors; Final Interim Staff Guidance on Finalizing Licensing Basis Information

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The NRC is issuing its Final Interim Staff Guidance (ISG) DC/COL–ISG–011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092890623). This ISG is to clarify the NRC staff position on finalizing licensing basis information at a point during the licensing review, a so-called freeze point, and the control of licensing basis information during and following the initial review of applications for design certifications (DCs) or combined licenses (COLs). The NRC staff issues COL/DC–ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for DCs and COLs by the Office of New Reactors (NRO). The NRC staff intends to incorporate the final approved DC/COL–ISG–011 into the next revision of Regulatory Guide 1.206, ''Combined License Applications for Nuclear Power Plants.''

Disposition: On May 28, 2009, the NRC staff issued the proposed ISG on ''Finalizing Licensing Basis Information,'' ADAMS Accession No. ML090550772. There were no comments received on the proposed ISG. Therefore, the guidance is issued as final without any changes to the proposed notification as above.

ADDRESSES: The NRC maintains ADAMS which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *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 Public Document reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. William D. Reckley, Chief, Advanced Reactors Branch 1, Advanced Reactor Program, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–7490 or e-mail at *william.reckley@nrc.gov*.

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 2nd day of November 2009.

For the Nuclear Regulatory Commission.

William F. Burton,

Branch Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9–26909 Filed 11–6–09; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Job Information Report, OMB 3220–0193

In July of 1997, the Railroad Retirement Board (RRB) adopted standards for the adjudication of occupational disabilities under the Railroad Retirement Act (RRA). As part of these standards, the RRB requests job information to determine an applicant's eligibility for an occupational disability. The job information received from the railroad employer and railroad employee is compared, reconciled (if needed), and then used in the occupational disability determination process. The process of obtaining information from railroad employers used to determine an applicant's eligibility for an occupational disability is outlined in 20 CFR 220.13(b)(2)(e).

To determine an occupational disability, the RRB determines if an employee is precluded from performing the full range of duties of his or her regular railroad occupation. This is accomplished by comparing the restrictions on impairment(s) causes against an employee's ability to perform his/her normal duties. To collect information needed to determine the effect of a disability on an applicant's ability to work, the RRB needs the applicant's work history. The RRB currently utilizes Form G–251, *Vocational Report* (OMB 3220–0141), to obtain this information from the employee applicant.

Note: Form G–251 is provided to *all* applicants for employee disability annuities and to those applicants for a widow(er)'s disability annuity who indicate that they have been employed at some time.

In accordance with the standards, the RRB also requests pertinent job

information from employers. The employer is given thirty days from the date of the notice to respond. The responses are not required, but are voluntary. If the job information is received timely, it is compared to the job information provided by the employee. Any material differences are resolved by an RRB disability examiner. Once resolved, the information is compared to the restrictions caused by the medical impairment. If the restrictions prohibit the performance of the regular railroad occupation, the claimant is found occupationally disabled.

The RRB uses two forms to secure job information data from the railroad employer. RRB Form G–251a, Employer Job Information (job description), is released to an employer when an application for an occupational disability is filed by an employee whose regular railroad occupation is one of the more common types of railroad jobs (locomotive engineer, conductor, switchman, etc.) It is accompanied by a *generic job description* for that particular railroad job. The generic job descriptions describe how these select occupations are generally performed in the railroad industry. However, not all occupations are performed the same way from railroad to railroad. Thus, the employer is given an opportunity to comment on whether the job description matches the employee's actual duties. If the employer concludes that the generic job description accurately describes the work performed by the applicant, no further action will be necessary. If the employer determines that the tasks are different, it may provide the RRB with a description of the actual job tasks. The employer has thirty days from the date the form is released to reply.

Form G–251b, Employer Job Information (general), is released to an employer when an application for an RRB occupational disability is filed by an employee whose regular railroad occupation does not have a generic job description. It notifies the employer that the employee has filed for a disability annuity and that, if the employer wishes, it may provide the RRB with job duty information. The type of information the RRB is seeking is outlined on the form. The employer has thirty days from the date the form is released to reply.

The completion time for Form G–251a and G–251b is estimated at 20 minutes. Completion is voluntary. The RRB estimates that approximately 125 G–251a's and 305 G–251b's are completed annually. The RRB proposes no changes to Forms G–251a and G–251b.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Patricia.Henaghan@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E9–26873 Filed 11–6–09; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17i–8, SEC File No. 270–533, OMB Control No. 3235–0591.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995[1] the Securities and Exchange Commission (''Commission'') intends to submit to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below. The Code of Federal Regulations citation to this collection of information is the following rule: 17 CFR 240.17i–8.

Section 231 of the Gramm-Leach-Bliley Act of 1999[2] (the ''GLBA'') amended Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) to create a regulatory framework under which a holding company of a broker-dealer (''investment bank holding company'' or ''IBHC'') may voluntarily be supervised by the Commission as a supervised investment bank holding company (or ''SIBHC'').[3] In 2004, the Commission promulgated rules, including Rule 17i–8, to create a framework for the Commission to supervise SIBHCs.[4] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor for SIBHCs and their affiliated broker-dealers.[5]

Pursuant to Section 17(i)(3)(A) of the Exchange Act, an SIBHC must make and keep records, furnish copies thereof, and make such reports as the Commission may require by rule.[6] Rule 17i–8 requires that an SIBHC to notify the Commission upon the occurrence of certain events that would indicate a decline in the financial and operational well-being of the firm. The notices required to be filed pursuant to Rule 17i–8 must be preserved for a period of not less than three years.[7]

The collections of information included in Rule 17i–8 are necessary to allow the Commission to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of Section 17 of the Act and allow the Commission to supervise the activities of these SIBHCs. Rule 17i–8 also enhances the Commission's supervision of the SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers. Without these notices, the Commission would be unable to adequately supervise an SIBHC, nor would it be able to determine whether continued supervision of an IBHC as an SIBHC were necessary and appropriate in furtherance of the purposes of Section 17 of the Act.

We estimate that three IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs. An SIBHC will require about one hour to create a notice required to be submitted to the Commission pursuant to Rule 17i–8. However, as these notices only need be filed in certain situations indicative of financial or operational difficulty, only one SIBHC may be required to file notice pursuant to the Rule every other year. Thus, we estimate that the annual burden of Rule 17i–8 for all SIBHCs would be about 30 minutes.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper

[1] 44 U.S.C. 3501 *et seq.*

[2] Public Law 106–102, 113 Stat. 1338 (1999).

[3] *See* 15 U.S.C. 78q(i).

[4] *See* Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[5] *See* H.R. Conf. Rep. No. 106–434, 165 (1999). *See also* Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

[6] 15 U.S.C. 78q(i)(3)(A).

[7] 17 CFR 240.17i–5(b)(4).

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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

November 2, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26885 Filed 11–6–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17i–5, SEC File No. 270–531, OMB Control No. 3235–0590.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [1] the Securities and Exchange Commission (''Commission'') intends to submit to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below. The Code of Federal Regulations citation to this collection of information is the following: 17 CFR 240.17i–5.

Section 231 of the Gramm-Leach-Bliley Act of 1999 [2] (the ''GLBA'') amended Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) to create a regulatory framework under which a holding company of a broker-dealer (''investment bank holding company'' or ''IBHC'') may voluntarily be supervised by the Commission as a supervised investment bank holding company (or ''SIBHC'').[3] In 2004, the Commission promulgated rules, including Rule 17i–5, to create a framework for the Commission to supervise SIBHCs.[4] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated home-country supervisor for SIBHCs and their affiliated broker-dealers.[5]

Pursuant to Section 17(i)(3)(A) of the Exchange Act, an SIBHC would be required to make and keep records, furnish copies thereof, and make such reports as the Commission may require by rule.[6] Rule 17i–5 would require that an SIBHC make and keep current certain records relating to its business. In addition, it would require that an SIBHC preserve those and other records for certain prescribed time periods.

The collections of information required pursuant to Rule 17i–5 are necessary so that the Commission can adequately supervise the activities of these SIBHCs. In addition, these collections of information are needed to allow the Commission to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of section 17 of the Act. Rule 17i–5 also enhances the Commission's supervision of the SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers. Without this information and documentation, the Commission would be unable to adequately supervise an SIBHC, nor would it be able to determine whether continued supervision of an IBHC as an SIBHC were necessary and appropriate in furtherance of the purposes of section 17 of the Act.

In addition to the one firm currently supervised by the Commission as an SIBHC, we estimate that 2 IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs; for a total of three firms. An SIBHC will generally require about 40 hours to create and document a contingency plan regarding funding and liquidity of the affiliate group at a cost of $9,200 per SIBHC.[7] An SIBHC will require, on average, approximately 64 hours each quarter to create a record regarding stress tests, or approximately 256 hours each year and a cost of $49,920.[8] Further, an SIBHC will establish approximately 20 new counterparty arrangements each year, and will take, on average, about 30 minutes to create a record regarding the basis for credit risk weights for each such counterparty for a cost of $84,000.[9] Finally, an SIBHC will generally require about 24 hours per year to maintain the specified records for a cost of $4,632.[10]

We believe that an IBHC likely will upgrade its information technology (''IT'') systems in order to more efficiently comply with certain of the SIBHC framework rules (including Rules 17i–4, 17i–5, 17i–6 and 17i–7), and that this would be a one-time cost. Depending on the state of development of the IBHC's IT systems, it would cost an IBHC between $1 million and $10 million to upgrade its IT systems to comply with the SIBHC framework of rules. Thus, on average, it would cost each of the three IBHCs about $5.5 million to upgrade their IT systems, or approximately $16.5 million in total. It is impossible to determine what percentage of the IT systems costs would be attributable to each Rule, so we allocated the total estimated upgrade costs equally (at 25% for each of the above-mentioned Rules), with $4,125,000 attributable to Rule 17i–5.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including

[1] 44 U.S.C. 3501 *et seq.*

[2] Public Law 106–102, 113 Stat. 1338 (1999).

[3] *See* 15 U.S.C. 78q(i).

[4] *See* Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[5] *See* H.R. Conf. Rep. No. 106–434, 165 (1999). *See* also Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

[6] 15 U.S.C. 78q(i)(3)(A).

[7] We believe that an SIBHC would have a Senior Treasury Manager create this record. According to the Securities Industry and Financial Markets Association (''SIFMA''), the hourly cost of a Senior Treasury Manager is $230, as reflected in the SIFMA's *Report on Management and Professional Earnings for 2008* (''SIFMA's Report on Professional Earnings''), and modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. ($230 × 40 hours) = $9,200.

[8] We believe that an SIBHC would have a Floor Supervisor, or equivalent, create this record with an hourly cost of $195, as reflected in SIFMA's Report on Professional Earnings''). ($195 × 256) = $49,920.

[9] On average, each firm presently maintains relationships with approximately 1,000 counterparties. Further, firms generally already maintain documentation regarding their credit decisions, including their determination of credit risk weights, for those counterparties. We believe that an SIBHC would have an Intermediate Accountant create this record, which according to SIFMA's Report on Professional Earnings receives an hourly rate of $141. ($141 × (30 minutes × 20 counterparties)) = $84,000.

[10] We believe that an SIBHC would have a Program Analyst perform this task and according to SIFMA's Report on Professional Earnings, a Programmer Analyst receives an hourly rate of $193. ($193 × 24) = $4,632.

whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 2, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26884 Filed 11–6–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, November 12, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c), (5), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, November 12, 2009 will be:

Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: November 5, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–27026 Filed 11–5–09; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60910; File No. SR–CBOE–2009–083]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Time at Which CBSX Opens for Trading From 8:15 a.m. Central Time to 8 a.m. Central Time

October 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2009, the 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

The Exchange proposes to expand, by 15 minutes, the CBOE Stock Exchange (''CBSX'') hours of operation. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

[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).

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

CBSX proposes to amend Rule 51.2 to change the time at which CBSX opens for trading from 8:15 a.m. Central Time to 8 a.m. Central Time. The proposed change would be effective as of November 2, 2009. This change has been requested by the CBSX Traders. Other U.S.-based exchanges open for trading earlier than 8 a.m. Central Time, including NASDAQ OMX PHLX.[5]

The Exchange represents that the earlier start time will have no implications for CBSX systems. Opening at 8 a.m. Central Time merely extends by 15 minutes the ''pre-NMS'' trading window currently available on CBSX between 8:15 and 8:30 Central Time. CBSX DPMs will not be adversely affected because their quoting obligations do not start until 8:30 a.m. Central Time. Lastly, the Exchange represents that CBSX traders have been notified of the time change via circular.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') [6] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in

[5] *See* NASDAQ OMX PHLX Rule 101.

[6] 15 U.S.C. 78s(b)(1).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest. Opening trading earlier will permit investors greater opportunity to participate in the market, thereby removing an impediment to trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] *and Rule 19b–4(f)(6) thereunder*[10] *because the proposal does not:* (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 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.[11]

The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission hereby grants that request and believes that such action is consistent with the protection of investors and the public interest. The Exchange has represented that the proposed earlier start time will not impact its systems or adversely affect market participants whose quoting obligations do not start until 8:30 a.m. Central Time.[12] Moreover, the Commission notes that the Exchange represents that it notified CBSX traders via circular the proposed time change.[13]

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission 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 Commission has waived the pre-filing requirement in this case.

[12] *See* CBOE Rule 53.56(a)(4).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–083 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–2009–083. 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–2009–083 and should be submitted on or before November 30, 2009.

[14] 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26876 Filed 11–6–09; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60912; File No. SR–NYSE–2009–108]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adjust Its Rebates Paid to Supplemental Liquidity Providers

November 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 October 29, 2009, New York Stock Exchange LLC (the ''NYSE'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of credits paid to Supplemental Liquidity Providers, effective November 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

Currently, the NYSE pays a credit of $0.0015 per share to Supplemental Liquidity Providers (''SLPs'') when they provide liquidity on the NYSE and the SLP (i) meets the 3% average or more quoting requirement in an assigned security pursuant to Rule 107B and (ii) adds liquidity of an average daily volume (''ADV'') of 100 million shares or less in the applicable month. Effective November 1, 2009, the Exchange is modifying the requirements for an SLP to qualify for the $0.0015 per share credit, by requiring that the SLP must add liquidity of an ADV of more than 10 million shares in the applicable month to qualify for the credit. This new requirement will not apply to a new SLP in the first month that it is an SLP, as the Exchange believes the requirement would be difficult for a new SLP to meet while building up its liquidity providing activities in that first month. The Exchange is also amending the Price List to make it clear that, when SLPs do not qualify for the $0.0015 per share credit, they are entitled to the $0.0010 per share credit payable to all customers when providing liquidity.

Currently, SLPs receive a credit of $0.0005 per share for executions at the close, except market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders. While it is not making any substantive change to the treatment of MOC and LOC orders executed by SLPs, the Exchange is amending the Price List to clarify that MOC and LOC orders do not benefit from the credit. SLPs will continue to pay the same transaction fees on MOC and LOC orders as are paid by other member organizations. The fee for MOC and LOC orders is $0.0006 per share for any member organization executing an ADV on the NYSE in the applicable month of at least 130 million shares, including (i) adding liquidity in an ADV of at least 30 million shares and (ii) an ADV of at least 15 million shares total in MOC and LOC orders. The fee for MOC and LOC orders for member organizations not meeting the requirements set forth in the preceding sentence is $0.0007 per share.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6[4] of the Act of 1934 the Act in general and Section 6(b)(4) of the Act[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges, as the liquidity provided by SLPs is an important part of the NYSE market model and it is therefore appropriate to structure credits to incent liquidity provision by SLPs.

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.

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)[6] of the Act and Rule 19b–4(f)(2)[7] 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–2009–108 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–2009–108. 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 No. SR–NYSE–2009–108 and should be submitted on or before November 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26878 Filed 11–6–09; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60919; File No. SR–CBOE–2009–079]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

November 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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 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

CBOE proposes to amend proposes to amend its rules relating to the Penny Pilot Program. 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'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

CBOE proposes to identify the 75 option classes that will be added to the Penny Pilot Program beginning on November 2, 2009. CBOE recently received approval to extend and expand the Penny Pilot Program through December 31, 2010.[3] As described in its filing, the Pilot Program will be expanded by adding 300 option classes, in groups of 75 classes each quarter beginning on the following dates: November 2, 2009, February 1, 2010, May 3, 2010, and August 2, 2010.[4] The option classes will be identified based on national average daily volume in the six calendar months preceding their addition to the Pilot Program using data compiled by The Options Clearing Corporation, except that the month immediately preceding their addition to the Pilot Program would not be utilized for purposes of the six month analysis.

The following 75 option classes will be added to the Pilot Program beginning on November 2, 2009:

Symbol	Company name
ABX	Barrick Gold Corp
AXP	American Express Co
AUY	Yamana Gold Inc
BA	Boeing Co/The
BBT	BB&T Corp
BBY	Best Buy Co Inc
BP	BP PLC
CHK	Chesapeake Energy Corp
CIT	CIT Group Inc
COF	Capital One Financial Corp
CVX	Chevron Corp
DE	Deere & Co
DOW	Dow Chemical Co/The
DRYS	DryShips Inc
EFA	iShares MSCI EAFE Index Fund
ETFC	E*Trade Financial Corp
EWZ	iShares MSCI Brazil Index Fund
FAS	Direxion Daily Financial Bull 3X Shares
FAZ	Direxion Daily Financial Bear 3X Shares
FITB	Fifth Third Bancorp
FSLR	First Solar Inc
FXI	iShares FTSE/Xinhua China 25 Index Fund
GDX	Market Vectors—Gold Miners ETF
GG	Goldcorp Inc
GLD	SPDR Gold Trust
HGSI	Human Genome Sciences Inc
HIG	Hartford Financial Services Group Inc
HPQ	Hewlett-Packard Co
IBM	International Business Machines Corp
IYR	iShares Dow Jones US Real Estate Index Fund
JNJ	Johnson & Johnson
JNPR	Juniper Networks Inc
KO	Coca-Cola Co/The
LVS	Las Vegas Sands Corp
MCD	McDonald's Corp
MGM	MGM Mirage
MON	Monsanto Co
MOS	Mosaic Co/The
MRK	Merck & Co Inc/NJ
MS	Morgan Stanley
NLY	Annaly Capital Management Inc
NOK	Nokia OYJ
NVDA	Nvidia Corp
ORCL	Oracle Corp
PALM	Palm Inc
PBR	Petroleo Brasileiro SA
PG	Procter & Gamble Co/The
POT	Potash Corp of Saskatchewan Inc
RF	Regions Financial Corp
RIG	Transocean Ltd
RMBS	Rambus Inc
S	Sprint Nextel Corp
SDS	ProShares UltraShort S&P500
SKF	ProShares UltraShort Financials
SLB	Schlumberger Ltd
SLV	iShares Silver Trust
SRS	ProShares UltraShort Real Estate
SSO	ProShares Ultra S&P500
STI	SunTrust Banks Inc
SVNT	Savient Pharmaceuticals Inc
TBT	ProShares UltraShort 20+ Year Treasury
UNG	United States Natural Gas Fund LP
UNH	UnitedHealth Group Inc
UPS	United Parcel Service Inc
USB	US Bancorp
USO	United States Oil Fund LP
UYG	ProShares Ultra Financials
V	Visa Inc
WFC	Wells Fargo & Co
WYNN	Wynn Resorts Ltd
X	United States Steel Corp
XHB	SPDR S&P Homebuilders ETF
XLI	Industrial Select Sector SPDR Fund
XLU	Utilities Select Sector SPDR Fund
XRT	SPDR S&P Retail ETF

The minimum increments for all classes in the Penny Pilot, except for the QQQQs, continue to be $0.01 for all option series below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). For QQQQs, the minimum increment remains $0.01 for all option series.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations under the Act applicable to a national

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60864 (October 22, 2009), granting immediate effectiveness to SR–CBOE–2009–76.

[4] The classes to be added are among the most actively-traded, multiply-listed option classes that are not currently in the Pilot Program, excluding option classes with high premiums. An option class would be designated as ''high premium'' if, at the time of selection, the underlying security was priced at $200 per share or above, or the underlying index level was at 200 or above.

securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest by identifying the option classes to be added to the Pilot Program in a manner consistent with CBOE's prior rule filing SR–CBOE–2009–76 to extend and expand the Pilot Program.

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

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)[7] of the Securities Exchange Act of 1934 and Rule 19b–4(f)(1)[8] thereunder as it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. 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–2009–079 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–2009–079. 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 CBOE. 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–2009–079 and should be submitted on or before November 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26883 Filed 11–6–09; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–60916; File No. SR–NYSEAmex–2009–78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Exchange Rule 62 to Support Quoting and Trading in a Minimum Price Variation Below $.01 for Securities Traded on the Exchange for Orders or Interest Priced Below $1.00 Per Share

November 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 October 27, 2009, NYSE Amex LLC (''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE Amex has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 62 (Variations) to support quoting and trading in a minimum price variation below $.01 for securities traded on the Exchange for orders or interest priced below a [sic] $1.00 per share. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Amex Equities Rule 62 (Variations) to support quoting and trading in a minimum price variation below $.01 for securities traded on the Exchange for orders or interest (''orders/interest'') priced below a [sic] $1.00 per share. The proposed amendment to NYSE Amex Equities Rule 62 will enable the Exchange to quote and execute orders/interest in sub-penny increments of $0.0001 for those securities that are priced below $1.00 per share.

The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC.[4]

Background

NYSE Amex Equities Rules establish minimum price variations for quoting and entry of orders in equity securities depending on the price of the orders/interest. Currently, the minimum price variations range from ten cents (.10) for orders/interest priced $100,000 or greater, to one cent for orders/interest priced between $1.00 and $99,999 and one one-thousandth of a cent (.0001) for orders/interest priced less than $1.00.[5] Significantly for this rule filing, although Exchange systems accept orders/interest priced below $1.00 in sub-penny increments, the Exchange does not quote or execute orders/interest in these increments.[6] Instead, the second paragraph of the Supplementary Material of NYSE Amex Equities Rule 62 sets forth the procedures for orders/interest that contains a sub-penny component.

Price of order or interest	Minimum price variation
Less Than $1.00	$.0001
$1.00 to 99,999.99	$.01
$100,000 or greater	$.10

Specifically, when an order/interest is received on NYSE Amex that contains a sub-penny component, the Exchange rounds the incoming order/interest either up or down to the nearest whole cent increment.[7] Thus, the price of an incoming bid is rounded down to the next round penny and the price of an incoming offer is rounded up to the next round penny. This rounding is completed before the order is quoted, traded, or routed to another market center, and the rounded price is used for all routing and execution decisions. In fact, the rounded price assigned to the order or quotation is used for all order handling purposes including when the order is sent to Exchange trading systems and the Consolidated Quotation System.

Proposed Amendment to NYSE Amex Equities Rule 62

Through this filing, the Exchange seeks to eliminate the above described order handling procedures for orders/interest submitted to the Exchange that contain a sub-penny component. Instead, the Exchange proposes to quote, trade or route to another market center orders/interest that contain a sub-penny component without first rounding the orders/interest. The Exchange therefore proposes to delete Supplementary Material .20 from NYSE Rule 62 because Exchange technology can [sic] is capable of quoting and executing orders/interest in sub-penny increments of $0.0001 for those securities that are priced below $1.00 per share. The Exchange further proposes to delete the duplicate captioning of ''NYSE Amex Equities'' in Rule 62.

The Exchange will commence implementation of the systemic changes to allow Exchange systems to quote, trade or route to another market center orders/interest that contain a sub-penny component on or about November 27, 2009. The Exchange intends to progressively implement these systemic changes on a security by security basis as it gains experience with the new technology until it is operative in all securities traded on the Floor. During the implementation, the Exchange will identify on its website which securities have been transitioned to the new system.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'')[8] for this proposed rule change is the requirement under Section 6(b)(5)[9] that an Exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer. The Exchange believes that the instant proposal is in keeping with these principles in that it seeks to amend NYSE Amex Equities Rule 62 to provide for executions of interest entered on the Exchange in increments below $.01, consistent with the provisions of Rule 612 of Regulation NMS[11] which permits markets to accept, rank and display orders priced less than $1.00 per share in a minimum pricing increment of $0.0001.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

[4] *See* SR–NYSE–2009–107.

[5] *See* NYSE Amex Equities Rule 62 Supplementary Material first paragraph which provides in pertinent part:

[6] *See* Securities Exchange Act Release No. 59025 (November 26, 2008), 73 FR 73769 (December 3, 2008) (SR–NYSE–2008–123) [sic].

[7] *See* NYSE [sic] Rule 62 Supplementary Material second paragraph.

[8] 15 U.S.C. 78a.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

[11] 17 CFR 242.612.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days

Continued

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it may immediately provide another competitive venue for market participants to submit orders priced less than $1.00 per share in a minimum pricing increment of $0.0001 for execution. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will provide another competitive venue for execution of orders priced in sub-penny increments of $0.0001 for securities priced below $1.00 per share.[16] For these reasons, the Commission designates that the proposed rule change become operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2009–78 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–2009–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2009–78 and should be submitted on or before November 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26882 Filed 11–6–09; 8:45 am]

BILLING CODE 8011–01–P

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.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60915; File No. SR–NYSE–2009–107]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Exchange Rule 62 To Support Quoting and Trading in a Minimum Price Variation Below $.01 for Securities Traded on the Exchange for Orders or Interest Priced Below $1.00 Per Share

November 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 October 27, 2009, the New York Stock Exchange LLC (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 62 (Variations) to support quoting and trading in a minimum price variation below $.01 for securities traded on the Exchange for orders or interest priced below a [sic] $1.00 per share. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Rule 62 (Variations) to support quoting and trading in a minimum price variation below $.01 for securities traded on the Exchange for orders or interest (''orders/interest'') priced below a [sic] $1.00 per share. The proposed amendment to NYSE Rule 62 will enable the Exchange to quote and execute orders/interest in sub-penny increments of $0.0001 for those securities that are priced below $1.00 per share.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC (formerly the American Stock Exchange).[4]

Background

NYSE rules establish minimum price variations for quoting and entry of orders in equity securities depending on the price of the orders/interest. Currently, the minimum price variations range from ten cents (.10) for orders/interest priced $100,000 or greater, to one cent for orders/interest priced between $1.00 and $99,999 and one one-thousandth of a cent (.0001) for orders/interest priced less than $1.00.[5] Significantly for this rule filing, although Exchange systems accept orders/interest priced below $1.00 in sub-penny increments, the Exchange does not quote or execute orders/interest in these increments.[6] Instead, NYSE Rule 62.20 sets forth the procedures for orders/interest that contains a sub-penny component.

Specifically, when an order/interest is received on the NYSE that contains a sub-penny component, the Exchange rounds the incoming order/interest either up or down to the nearest whole cent increment.[7] Thus, the price of an incoming bid is rounded down to the next round penny and the price of an incoming offer is rounded up to the next round penny. This rounding is completed before the order is quoted, traded, or routed to another market center, and the rounded price is used for all routing and execution decisions. In fact, the rounded price assigned to the order or quotation is used for all order handling purposes including when the order is sent to Exchange trading systems and the Consolidated Quotation System.

Proposed Amendment to NYSE Rule 62

Through this filing, the Exchange seeks to eliminate the above described order handling procedures for orders/interest submitted to the Exchange that contain a sub-penny component. Instead, the Exchange proposes to quote, trade or route to another market center orders/interest that contain a sub-penny component without first rounding the orders/interest. The Exchange therefore proposes to delete Supplementary Material .20 from NYSE Rule 62 because Exchange technology can [sic] is capable of quoting and executing orders/interest in sub-penny increments of $0.0001 for those securities that are priced below $1.00 per share.

The Exchange will commence implementation of the systemic changes to allow Exchange systems to quote, trade or route to another market center orders/interest that contain a sub-penny component on or about November 27, 2009. The Exchange intends to progressively implement these systemic changes on a security by security basis as it gains experience with the new technology until it is operative in all securities traded on the Floor. During the implementation, the Exchange will identify on its Web site which securities have been transitioned to the new system.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'')[8] for this proposed rule change is the requirement under Section 6(b)(5)[9] that an Exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer. The Exchange believes that the instant proposal is in keeping with these principles in that it seeks to amend NYSE Rule 62 to provide for executions of interest entered on the Exchange in increments below $.01, consistent with the provisions of Rule 612 of Regulation NMS[11] which permits markets to accept, rank and display orders priced less than $1.00 per share in a minimum pricing increment of $0.0001.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it may immediately provide another competitive venue for market

[4] *See* SR–NYSEAmex–2009–78.

[5] *See* NYSE Rule 62. Supplementary Material .10.

[6] *See* Securities Exchange Act Release No. 59025 (November 26, 2008), 73 FR 73769 (December 3, 2008) (SR–NYSE–2008–123).

[7] *See* NYSE Rule 62. Supplementary Material .20.

[8] 15 U.S.C. 78a.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

[11] 17 CFR 242.612.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

participants to submit orders priced less than $1.00 per share in a minimum pricing increment of $0.0001 for execution. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will provide another competitive venue for execution of orders priced in sub-penny increments of $0.0001 for securities priced below $1.00 per share.[16] For these reasons, the Commission designates that the proposed rule change become operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–107 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–2009–107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2009–107 and should be submitted on or before November 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8011–01–P

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60914; File No. SR–ISE–2009–88)

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amending the Direct Edge ECN Fee Schedule

November 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Direct Edge ECN's (''DECN'') fee schedule for ISE Members[3] to (i) adopt new fees and rebates and associated flags; (ii) amend the criteria for meeting the Ultra Tier; (iii) amend the applicability of the Super Tier rebate to Tape B securities; and (iv) make typographical changes to the fee schedule. All of the changes described herein are applicable to ISE Members.

All of the changes described herein are applicable to ISE Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA. On July 1, 2009,[4] the Exchange adopted a new Ultra Tier Rebate whereby ISE Members are provided a $0.0032 rebate per share for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the attributed MPID satisfies one of the following criteria on a daily basis, measured monthly: (i) Adding 100,000,000 shares or more on EDGX; or (ii) adding 50,000,000 shares or more of liquidity on EDGX, so long as added liquidity on EDGX is at least 20,000,000 shares greater than the previous calendar month. The rebate described above is referred to as an ''Ultra Tier Rebate'' on the DECN fee schedule.

[3] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

[4] *See* Securities Exchange Act Release No. 60232 (July 2, 2009), 74 FR 33309 (July 10, 2009) (SR–ISE–2009–43).

On October 1, 2009,[5] the Exchange amended the criteria for meeting this tier by allowing ISE Members to receive a $0.0032 rebate per share for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the attributed MPID posts 1% of the total consolidated volume (''TCV'') in average daily volume (''ADV''). TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape A, B, and C securities. In addition, members can also qualify for a rebate of $0.0032 per share for all liquidity posted on EDGX if they (i) add or route at least 10,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except N and W) and add a minimum of 75,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours.

The Exchange is now proposing to add liquidity flags to reflect adding and removing liquidity during pre- and post-trading hours. When members add liquidity on Tapes A & C during the pre- and post-trading hours, they will be rebated $0.0025 per share on EDGX and charged $0.0002 per share on EDGA and this situation will yield Flag 3. When members add liquidity during the pre and post-trading hours on Tape B, they will be rebated $0.0025 per share on EDGX and charged $0.0002 per share on EDGA and this situation will yield Flag 4. When members cross with themselves (internalization) during the pre and post-trading hours, they will be charged $0.000025 per share on EDGX and will not be charged on EDGA. This situation will yield flag 5. When members remove liquidity from any Tape during the pre- and post-trading hours, they will be charged $0.0028 per share on EDGX and be rebated $0.0002 on EDGA. This situation will yield flag 6. Finally, for members whose orders are routed from EDGA or EDGX during the pre- and post- trading hours, they will be charged $0.0030 per share. This situation will yield flag 7. In addition, the rebate of $0.0002 for removing liquidity on EDGA and charge of $0.0002 for adding liquidity on EDGA is described in more detail below. As discussed below, the Exchange believes that this fee structure will enable it to compete effectively with other market centers that have recently introduced such pricing.

The Exchange is also now proposing to add an additional way to qualify for the Ultra Tier. Members can also qualify for a $0.0032 rebate per share for all liquidity posted on EDGX if the attributed MPID on a daily basis, measured monthly, adds a minimum of 50,000,000 shares per day to EDGX so long as the added liquidity on EDGX is at least 50,000,000 shares greater than the previous calendar month.

The Exchange believes that this additional way to meet the Ultra Tier (a tier-based rate) will incent Members to interact with order flow on DECN. This discount rate arises in part from reduced administrative costs associated with certain volume levels.

As discussed above, the Exchange also proposes to adopt additional fees and rebates to remain competitive with other market centers. First, the Exchange proposes to amend the fees on EDGA for adding and removing liquidity for securities priced $1 and over. Effective November 1, 2009, the Exchange proposes to rebate $0.0002 per share for removing liquidity on EDGA if the attributed MPID adds or routes a minimum average daily share volume, measured monthly, of 50,000 shares on either EDGX, EDGA, or EDGX and EDGA combined. As today, any attributed MPID not meeting the aforementioned minimum is charged $0.0030 per share for removing liquidity from EDGA. In addition, the Exchange proposes to charge $0.0002 per share for adding liquidity on EDGA unless the attributed MPID adds a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. If members meet or exceed such volume threshold, they will not be charged to add liquidity on EDGA.

In addition, the Exchange proposes to make conforming changes to the flags associated with these above-described fees. Flags associated with adding liquidity on EDGA are proposed to be updated to reflect the $0.0002 charge. These flags include B, V, and Y. The fees associated with Flags 3 and 4, discussed in more detail above, are also consistent with this fee structure. Flags associated with removing liquidity on EDGA are also proposed to be updated to reflect the $0.0002 rebate. These flags include N and W. Flag 6, discussed in more detail above, is also consistent with this fee structure.

Furthermore, the Exchange proposes to amend the fee on EDGX for adding liquidity on Tape B for securities priced $1 and over. The Exchange proposes to rebate $0.0025 per share (the same as currently exists for Tapes A & C). A conforming change is proposed to be made to Flag B, which indicates liquidity added to EDGX's book.

Additionally, the Exchange proposes to modify the Super Tier rebate to include transactions in Tape B securities as well. Currently, the Super Tier only applies to Tapes A & C. As a result of this proposed amendment, Members who execute transactions in Tape B securities will also qualify for the Super Tier and will be provided a $0.0030 rebate per share for liquidity added on EDGX if the attributed MPID satisfies any of the following three criteria on a daily basis, measured monthly: (i) Adding 40,000,000 shares or more on either EDGX, EDGA, or EDGX and EDGA combined; (ii) adding 20,000,000 shares or more on either EDGX, EDGA, or EDGX and EDGA combined and routing 20,000,000 shares or more through EDGA; or (iii) adding 10,000,000 shares or more of liquidity to EDGX, so long as added liquidity on EDGX is at least 5,000,000 shares greater than the previous calendar month.

The Exchange proposes to amend the fees on both EDGX and EDGA for securities priced less than $1. For such securities, the Exchange proposes to amend the fees for routing to be 0.30% of the total dollar value of the transaction instead of 0.29% of the dollar value of the transaction.

The Exchange believes that the above-described fee changes will enable DECN to compete effectively with other market centers.

Finally, the Exchange proposes to make typographical changes to the fee schedule to clarify that Flags M, V, and Y are rebates for adding liquidity. For Flag M, parentheses have been added to indicate that $0.0024 rebate per share is both on EDGA and EDGX. For Flags V and Y, parentheses have been added to indicate that the $0.0025 rebate per share is on EDGX.

The fee changes discussed in this filing will become operative on November 1, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, adopting an additional rebate and providing tier-based rates for Members provide pricing incentives to market participants that route orders to DECN, allowing DECN to remain competitive. This tier-based rate arises in part from reduced administrative costs associated with certain volume

[5] *See* Securities Exchange Act Release No. 60769 (October 2, 2009) 74 FR 51903 (October 8, 2009) (SR–ISE–2009–68).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

levels. ISE notes that DECN operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to DECN. ISE believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to DECN rather than competing venues. Additionally, ISE believes that the inverse pricing structure on EDGA, rebates and new flags enable the Exchange to compete effectively with other market centers. The ISE also believes that the proposed rates are equitable in that they apply uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [8] and Rule 19b–4(f)(2) [9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–88. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–ISE–2009–88 and should be submitted on or before November 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26880 Filed 11–6–09; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60913; File No. SR–ISE–2009–89]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Amounts That Direct Edge ECN, in Its Capacity as an Introducing Broker for Non-ISE Members, Passes Through to Such Non-ISE Members

November 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the amounts that Direct Edge ECN (''DECN''), in its capacity as an introducing broker for non-ISE Members, passes through to such non-ISE Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA. On October 30, 2009, the ISE filed for immediate effectiveness a proposed rule change to: (i) Amend DECN's fee schedule for ISE Members [3] to adopt new fees and rebates and associated flags; [4] (ii) amend the criteria for meeting the Ultra Tier; [5] (iii) amend the applicability of the Super Tier rebate to Tape B securities; [6] and (iv) make typographical changes to the fee schedule.[7] The fee changes made pursuant to SR–ISE–2009–88 became operative on November 1, 2009.

In its capacity as a member of ISE, DECN currently serves as an introducing broker for the non-ISE Member subscribers of DECN to access EDGX and EDGA. DECN, as an ISE Member and introducing broker, receives rebates and is assessed charges from DECN for transactions it executes on EDGX or EDGA in its capacity as introducing broker for non-ISE Members. Since the amounts of such rebates and charges were changed pursuant to SR–ISE–2009–88, DECN wishes to make corresponding changes to the amounts it passes through to non-ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers receive and are charged will be the same as the amounts that ISE Members receive and are charged.

ISE is seeking accelerated approval of this proposed rule change, as well an effective date of November 1, 2009. ISE represents that this proposal will ensure that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will in effect receive and be charged equivalent amounts and that the imposition of such amounts will begin on the same November 1, 2009 start date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, this proposal will ensure that dues, fees and other charges imposed on ISE Members are equitably allocated to both ISE Members and non-ISE Members (by virtue of the pass-through described above).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

[4] In SR–ISE–2009–88, the Exchange adopted additional fees and rebates to remain competitive with other market centers. First, the Exchange amended the fees on EDGA for adding and removing liquidity for securities priced $1 and over. Effective November 1, 2009, the Exchange rebates $0.0002 per share for removing liquidity on EDGA if the attributed MPID adds or routes a minimum average daily share volume, measured monthly, of 50,000 shares on either EDGX, EDGA, or EDGX and EDGA combined. As today, any attributed MPID not meeting the aforementioned minimum is charged $0.0030 per share for removing liquidity from EDGA. In addition, the Exchange charges $0.0002 per share for adding liquidity on EDGA unless the attributed MPID adds a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. If members meet or exceed such volume threshold, they are not charged to add liquidity on EDGA.

In addition, in SR–ISE–2009–88, the Exchange made conforming changes to the flags associated with these above-described fees. Flags associated with adding liquidity on EDGA were updated to reflect the $0.0002 charge. These flags include B, V, and Y. The fees associated with Flags 3 and 4, discussed in more detail below, are also consistent with this fee structure. Flags associated with removing liquidity on EDGA were updated to reflect the $0.0002 rebate. These flags include N and W. Flag 6, discussed in more detail below, is also consistent with this fee structure.

Furthermore, in SR–ISE–2009–88, the Exchange amended the fee on EDGX for adding liquidity on Tape B for securities priced $1 and over. The Exchange rebates $0.0025 per share (the same as currently exists for Tapes A & C). A conforming change was made to Flag B, which indicates liquidity added to EDGX's book.

Finally, the Exchange amended the fees on both EDGX and EDGA for securities priced less than $1. For such securities, the Exchange amended the fees for routing to be 0.30% of the total dollar value of the transaction instead of 0.29% of the dollar value of the transaction.

The Exchange believes that the above-described fee changes enable DECN to compete effectively with other market centers.

[5] On July 1, 2009, the Exchange adopted a new Ultra Tier Rebate whereby ISE Members are provided a $0.0032 rebate per share for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the attributed MPID satisfies one of the following criteria on a daily basis, measured monthly: (i) Adding 100,000,000 shares or more on EDGX; or (ii) adding 50,000,000 shares or more of liquidity on EDGX, so long as added liquidity on EDGX is at least 20,000,000 shares greater than the previous calendar month. The rebate described above is referred to as an ''Ultra Tier Rebate'' on the DECN fee schedule. *See* Securities Exchange Act Release No. 60232 (July 2, 2009), 74 FR 33309 (July 10, 2009) (SR–ISE–2009–43).

Per SR–ISE–2009–68, the Exchange amended the criteria for meeting the Ultra Tier if ISE Members (i) add or route at least 10,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except N and W) and add a minimum of 75,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre- and post-trading hours. *See* Securities Exchange Act Release No. 60769 (October 2, 2009), 74 FR 51903 (October 8, 2009) (SR–ISE–2009–68).

In SR–ISE–2009–88, the Exchange also added an additional way to qualify for the Ultra Tier. Members can also qualify for a $0.0032 rebate per share for all liquidity posted on EDGX if the attributed MPID on a daily basis, measured monthly, adds a minimum of 50,000,000 shares per day to EDGX so long as the added liquidity on EDGX is at least 50,000,000 shares greater than the previous calendar month.

The Exchange believes that this additional way to meet the Ultra Tier (a tier-based rate) incents Members to interact with order flow on DECN. This discount rate arises in part from reduced administrative costs associated with certain volume levels.

In SR–ISE–2009–88, the Exchange added liquidity flags to reflect adding and removing liquidity during pre- and post-trading hours. When members add liquidity on Tapes A & C during the pre- and post-trading hours, they are rebated $0.0025 per share on EDGX and are charged $0.0002 per share on EDGA and this situation yields Flag 3. When members add liquidity during the pre- and post-trading hours on Tape B, they are rebated $0.0025 per share on EDGX and charged $0.0002 per share on EDGA and this situation yields Flag 4. When members cross with themselves (internalization) during the pre- and post-trading hours, they are charged $0.000025 per share on EDGX and are not charged on EDGA. This situation yields flag 5. When members remove liquidity from any Tape during the pre- and post-trading hours, they are charged $0.0028 per share on EDGX and are rebated $0.0002 on EDGA. This situation yields flag 6. Finally, for members whose orders are routed from EDGA or EDGX during the pre- and post-trading hours, they are charged $0.0030 per share. This situation yields flag 7. In addition, the rebate of $0.0002 for removing liquidity on EDGA and charge of $0.0002 for adding liquidity on EDGA is described in more detail below. The Exchange believes that this fee structure will enable it to compete effectively with other market centers that have recently introduced such pricing.

[6] Additionally, in SR–ISE–2009–88, the Exchange modified the Super Tier rebate to include transactions in Tape B securities as well. Previously, the Super Tier only applied to Tapes A & C. As a result of the amendment, Members who execute transactions in Tape B securities also qualify for the Super Tier and are provided a $0.0030 rebate per share for liquidity added on EDGX if the attributed MPID satisfies any of the following three criteria on a daily basis, measured monthly: (i) Adding 40,000,000 shares or more on either EDGX, EDGA, or EDGX and EDGA combined; (ii) adding 20,000,000 shares or more on either EDGX, EDGA, or EDGX and EDGA combined and routing 20,000,000 shares or more through EDGA; or (iii) adding 10,000,000 shares or more of liquidity to EDGX, so long as added liquidity on EDGX is at least 5,000,000 shares greater than the previous calendar month.

[7] In SR–ISE–2009–88, the Exchange made typographical changes to the fee schedule to clarify that Flags M, V, and Y are rebates for adding liquidity. For Flag M, parentheses were added to indicate that $0.0024 rebate per share is both on EDGA and EDGX. For Flags V and Y, parentheses were added to indicate that the $0.0025 rebate per share is on EDGX.

[8] 15 U.S.C. 78f.

[9] 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2009–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–89 and should be submitted on or before November 30, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)[11] of the Act, which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities.

As described more fully above, ISE recently amended DECN's fee schedule for ISE Members to, among other things, adopt new fees, rebates and associated flags for adding and removing liquidity during pre and post hours trading, add an additional method to qualify for the Ultra Tier rebate, modify the Super Tier rebate to include transactions in Tape B securities, adopt a charge for adding liquidity on EDGA unless certain volume thresholds are met, revise the fees for adding liquidity on EDGX and EDGA and made conforming changes to the flags associated with these rebates and fees.[12] The fee changes made pursuant to the Member Fee Filing became operative on November 1, 2009. DECN receives rebates and is charged fees for transactions it executes on EGDX or EDGA in its capacity as an introducing broker for its non-ISE member subscribers.

The current proposal, which will apply retroactively to November 1, 2009, will allow DECN to pass through the revised rebates and fees to the non-ISE member subscribers for which it acts an introducing broker. The Commission finds that the proposal is consistent with the Act because it will provide rebates and charge fees to non-ISE member subscribers that are equivalent to those established for ISE member subscribers in the Member Fee Filing.[13]

ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register**. As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the revised rebate and fees established for ISE member subscribers in the Member Fee Filing, resulting in equivalent rebates and fees for ISE member and non-member subscribers. In addition, because the proposal will apply the revised rebates and fees retroactively to November 1, 2009, the revised rebates and fees will have the same effective date, thereby promoting consistency in the DECN's fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ISE–2009–89) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26879 Filed 11–6–09; 8:45 am]

BILLING CODE 8011–01–P

[10] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(4).

[12] *See* File No. SR–ISE–2009–88 (the ''Member Fee Filing'').

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60911; File No. SR–NYSE–2009–109]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Extend the Pilot Program in Relation to Certain of Its Continued Listing Standards

November 2, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 30, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

change as described in Items I and II below, which items have been prepared by the Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b–4(f)(6) [4] under the Exchange Act. 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 extend until February 28, 2010, the operation of an amendment to the continued listing requirements in Section 802.01B of the Exchange's Listed Company Manual (the ''Manual'') that is currently in effect on a pilot program basis (the ''Pilot Program''). The Exchange also proposes to remove from Section 102.01C of the Manual references to the ''Initial Listing Standard for Companies Transferring from NYSE Arca,'' as it has ceased to be operative.

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 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

Prior to the adoption of the Pilot Program,[5] Section 802.01B(I) of the Manual provided that any company that qualified to list under the Earnings Test set out in Section 102.01C(I) or in Section 103.01B(I) (in the case of foreign private issuers) or pursuant to the requirements set forth under the Assets and Equity Test set forth in Section 102.01C(IV) or the ''Initial Listing Standard for Companies Transferring from NYSE Arca'' (the ''NYSE Arca Transfer Standard'') set forth in Section 102.01(C)(V) was considered to be below compliance standards if such company's average global market capitalization over a consecutive 30 trading-day period was less than $75 million and, at the same time, total stockholders' equity was less than $75 million. Under the Pilot Program, companies that listed under the initial listing standards set forth in the immediately preceding sentence are considered to be below compliance standards if average global market capitalization over a consecutive 30 trading-day period is less than $50 million and, at the same time, total stockholders' equity is less than $50 million. The Pilot Program expires by its terms on October 31, 2009, and the Exchange now proposes to extend its application for an additional five months, until February 28, 2010.

For companies listed under the Earnings Test, the Pilot Program returned continued listing requirements to those in place prior to the adoption of the current requirements on June 9, 2005.[6] Consequently, prior to implementation of the Pilot Program, the Exchange had considerable historical experience with the continued listing of companies that had continued to trade on the Exchange with global market capitalization and stockholders' equity each below $75 million but greater than $50 million. In addition, the Exchange's experience under the Pilot Program has been very positive, as none of the companies that were [sic] deemed back in compliance as a result of the adoption of the Pilot Program have [sic] subsequently fallen below the standard as amended by the Pilot program as of the date of this filing. Based on this experience, the Exchange believes that companies that exceed the continued listing standards as amended by the Pilot Program are suitable for continued listing on the Exchange.

The Exchange notes that the continued listing standards as amended by the Pilot Program are still higher than those of any other national securities exchange. Consequently, the Exchange believes that the Pilot Program is consistent with the protection of investors and the public interest and does not raise any novel regulatory issues. In addition, the Exchange notes that the Commission stated in the Pilot Program Notice [7] that it believed that the continued listing standards adopted under the Pilot Program met the requirements established in Exchange Act Rule 3a51–1(a)(2)(ii) [8] in that [sic] were reasonably related to the initial listing standards set forth in paragraph (a)(20)(i) of Exchange Act Rule 3a51–1 (the ''Penny Stock Rule'').[9]

The NYSE Arca Transfer Standard explicitly provided for the transfer of companies from NYSE Arca to the Exchange on or before August 31, 2009. As that date has passed, the Exchange is deleting the standard from Section 102.01(C) of the Manual. The reference to the NYSE Arca Transfer Standard in Section 802.01B is retained, as it continues to be relevant because it indicates which continued listing standard will be applied to companies that originally listed under the NYSE Arca Transfer Standard. A parenthetical has been added to Section 802.01B to indicate that the NYSE Arca Transfer Standard is no longer operative.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [10] of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5) [11] of the Exchange Act in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed extension to the Pilot Program is consistent with the investor protection objectives of the Exchange Act in that the continued listing standards under the Pilot Program are set at a high enough level that only companies that are suitable for continued listing on the Exchange will exceed the standards. The deletion of the NYSE Arca Transfer Standard is not a substantive change, as that standard was not operative after August 31, 2009.

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 59996 (May 28, 2009), 74 FR 26912 (June 4, 2009) (SR–NYSE–2009–48) (the ''Pilot Program Notice'').

[6] *See* Securities Exchange Act Release No. 51813 (June 9, 2005), 70 FR 35484 (June 20, 2005) (SR–NYSE–2004–20). The Assets and Equity Test set forth in Section 102.01C(IV) and the NYSE Arca Transfer Standard set forth in Section 102.01C(V) were adopted subsequent to this amendment.

[7] *See* the Pilot Program Notice at Note 5.

[8] 17 CFR 240.a51–1(a)(2)(ii).

[9] 17 CFR 240.a51–1.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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) [12] of the Act and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[16] which would make the rule change operative 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 current Pilot Program to continue without interruption. The Commission notes that the standards under the Pilot Program are identical, for those companies qualifying under the Earnings Test, to those in effect on the Exchange prior to the adoption of the current standards in 2005.[17] The NYSE represents that the continued listing standards proposed under the Pilot Program are higher than similar standards currently in place on other exchanges. In addition, the Commission notes that the pilot period will allow the NYSE and the Commission to continue to assess the new continued listing standards. Finally, the Commission notes that the deletion of the NYSE Arca Transfer Standard from Section 102.01C is not a substantive change, as that standard is no longer operative. For these reasons, the Commission designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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–2009–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–109 and should be submitted on or before November 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26877 Filed 11–6–09; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its 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 fulfilled this requirement.

[14] *Id.*

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *Id.*

[17] *See* Securities Exchange Act Release No. 51813 (June 9, 2005), 70 FR 35484 (June 20, 2005) (SR–NYSE–2004–20).

[18] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 24, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2009–0267.

Date Filed: October 23, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 13, 2009.

Description: Application of Atlas Air, Inc. (''Atlas'') requesting a certificate of public convenience and necessity authorizing Atlas to engage in foreign charter air transportation of persons, property and mail. Atlas further requests an exemption to permit Atlas to conduct foreign charter air transportation of persons, property and mail for an initial period of one year or until the grant of the requested certificate authority, whichever is earlier.

Docket Number: DOT–OST–2009–0268.

Date Filed: October 23, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 13, 2009.

Description: Application of Atlas Air, Inc. (''Atlas'') requesting a certificate of public convenience and necessity authorizing Atlas to engage in interstate charter air transportation of persons, property and mail.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–26906 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 24, 2009

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2009–0262.

Date Filed: October 20, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC123 North Atlantic (except between USA and Korea, Rep. of, Malaysia) Resolutions and Specified Fares Tables (Memo 0455). Intended effective date: 1 April 2010.

Docket Number: DOT–OST–2009–0263.

Date Filed: October 21, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC123 Mid Atlantic, Resolutions and Specified Fares Tables (Memo 0456). Intended effective date: 1 April 2010.

Docket Number: DOT–OST–2009–0264.

Date Filed: October 21, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC123 South Atlantic, Resolutions and Specified Fares Tables (Memo 0457).

Intended effective date: 1 April 2010.

Docket Number: DOT–OST–2009–0265.

Date Filed: October 21, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC123 North Atlantic, between USA and Korea, Rep. of Malaysia, Resolutions and Specified Fares Tables (Memo 0458). Intended effective date: 1 April 2010.

Docket Number: DOT–OST–2009–0269.

Date Filed: October 21, 2009.

Parties: Members of the International Air Transport Association.

Subject: CSC/31/Meet/005/09 dated 8 April 2009. CSC/Mail Vote/002/2009 dated 29 September 2009. Finally Adopted Resolutions: 600a, 600f, 600g, 600h, 600i, and Recommended Practice 1670. Intended effective date: 23 December 2009.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–26905 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2).

DATES: The meeting will be held on Tuesday, December 1, 2009, beginning at 9 a.m., E.S.T.

ADDRESSES: The meeting will be held in the Commission Meeting Room at the headquarters of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (about 2 blocks from the Union Station stop on Metro's Red Line).

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman (202) 245–0202. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.

SUPPLEMENTARY INFORMATION: RETAC arose from a proceeding instituted by the Board, in *Establishment of a Rail Energy Transportation Advisory Committee,* STB Ex Parte No. 670. RETAC was formed to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues regarding the transportation by rail of energy resources, particularly, but not necessarily limited to, coal, ethanol, and other biofuels. The purpose of this meeting is to continue discussions regarding issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. Potential agenda items include reports from each of the four RETAC subcommittees (Best Practices, Capacity Planning, Communication, and Performance Measures), a briefing by the Electric Power Research Institute, a forecast update by the Energy Information Administration, a discussion of Federal Energy Regulatory Commission issues, and an open discussion of the state of the energy supply chain in light of current economic conditions.

The meeting, which is open to the public, will be conducted pursuant to RETAC's charter and Board procedures. A photo ID will be required for admission to the building. Further communications about this meeting may be announced through the Board's Web site at *http://www.stb.dot.gov*.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: November 4, 2009.

By the Board.

Anne K. Quinlan,

Acting Secretary.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–26928 Filed 11–6–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0169; Notice 1]

Receipt of Petition for Decision That Nonconforming 1994–1999 Bimota SB6 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–1999 Bimota SB6 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1999 Bimota SB6 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is December 9, 2009.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

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

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

US SPECS, LLC (''US SPECS''), of Havre de Grace, Maryland (Registered Importer 03–321) has petitioned NHTSA to decide whether non-U.S. certified 1994–1999 Bimota SB6 motorcycles are eligible for importation into the United States. The vehicles that US SPECS believes are substantially similar are 1994–1999 Bimota SB6 motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S. certified 1994–1999 Bimota SB6 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

US SPECS submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1999 Bimota SB6 motorcycles, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1999 Bimota SB6 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 106 *Brake Hoses:* inspection of all vehicles, and replacement of noncompliant brake hoses with U.S.-certified components on vehicles that are not already so equipped.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of the following U.S.-certified components on vehicles not already so equipped: (a) Headlamp; (b) front and rear side-mounted reflex reflectors; (c) rear-mounted reflex reflector; (d) turn signal lamps; and (e) taillamp.

Standard No. 111 *Rearview Mirrors:* Inspection of all vehicles, and replacement of noncompliant mirrors with U.S.-conforming components on vehicles that are not already so equipped.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* Installation of a U.S.-model speedometer, or modification of the existing speedometer to conforms with the requirements of this standard.

Standard No. 205 *Glazing Materials:* Inspection of all vehicles, and removal of noncompliant glazing or replacement of the glazing with U.S.-certified components on vehicles that are not already so equipped.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 3, 2009.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E9–26965 Filed 11–6–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the ''Fund''), an office within the Department of the Treasury, is soliciting comments concerning the CDFI Fund's Quarterly Institutional Level Report (QILR) for Awardees under the American Recovery and Reinvestment Act of 2009 (Recovery Act).

DATES: Written comments should be received on or before January 8, 2010 to be assured of consideration.

ADDRESSES: Direct all comments to Ruth Jaure, CDFI Program Manager, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 622–7754. Please note this is not a toll free number.

FOR FURTHER INFORMATION CONTACT: The CDFI Fund's Quarterly Institutional Level Report (QILR) may be obtained from the Recovery Act page of the CDFI Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Ruth Jaure, CDFI Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–9156. Please note this is not a toll free number.

SUPPLEMENTARY INFORMATION:

Title: Quarterly Institutional Level Report.

OMB Number: 1559–0035.

Abstract: The Community Development Financial Institutions (CDFI) Program was established by the Community Development and Regulatory Improvement Act of 1994 to use federal resources to invest in and build the capacity of CDFIs to serve low-income communities and people lacking adequate access to affordable financial products and services. Through the CDFI and Native CDFI Assistance (NACA) Programs, the CDFI Fund provides: (i) Financial Assistance (FA) awards to CDFIs and Native CDFIs that have demonstrable community development impact through the deployment of credit, capital, and financial services within their respective Target Markets or by expansion into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, and (ii) Technical Assistance (TA) grants to CDFIs and entities proposing to become CDFIs in order to build their capacity to better address the community development and capital access needs of their existing or proposed Target Markets and/or to become certified CDFIs. The regulations governing the CDFI Program are found at 12 CFR part 1805 and provide guidance on evaluation criteria and other requirements of the CDFI Program. Through the Recovery Act, the CDFI Fund was given authority to make $98 million in CDFI and NACA Program awards. Fifty-nine CDFIs received FA awards through the CDFI Program and ten Native CDFIs received FA and TA awards through the NACA Program. These Awardees must comply with both Recovery Act and CDFI Fund reporting requirements. The CDFI Fund will require Recovery Act Awardees to complete a Quarterly Institutional Level Report (QILR) to be submitted to the CDFI Fund no later than 10 days after the end of each calendar quarter in order to track each Awardee's use of Recovery Act funds.

The questions that the QILR contains will allow the CDFI Fund to evaluate the effectiveness and impact of the CDFI and NACA Programs. In addition, by comparing the data received through the QILR and the Recovery Act data collection system, the CDFI Fund will be better able to monitor compliance with Recovery Act requirements and to assure the quality of information provided to the Recovery Act federal reporting portal. Failure to obtain the information collected in the QILR could result in improper monitoring of the uses of Federal funds.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular Review.

Affected Public: CDFI and Native CDFI recipients of Recovery Act funding.

Estimated Number of Respondents: 69.

Estimated Annual Time Per Respondent: 95 hours.

Estimated Total Annual Burden Hours: 6,528 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund Web site at *http://www.cdfifund.gov.* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C 321; 12 CFR part 1806; Public Law 111–5.

Dated: November 2, 2009.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. E9–26872 Filed 11–6–09; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee November 2009 Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for November 12, 2009.

Date: November 12, 2009.

Time: 2 p.m. to 5 p.m.

Location: Eighth Floor Board Room, United States Mint, 801 9th Street, NW., Washington, DC 20220.

Subject: Review obverse candidate designs for the 2011 Presidential $1 Coin and the design theme for the 2011 Native American $1 Coin.

Interested persons should call 202–354–7502 or visit the Web site, *http://www.ccac.gov,* for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

■ Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.

■ Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.

■ Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: November 3, 2009.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E9–26915 Filed 11–6–09; 8:45 am]

BILLING CODE P

Federal Register

Monday,
November 9, 2009

Part II

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Certain Consumer Products (Dishwashers, Dehumidifiers, Microwave Ovens, and Electric and Gas Kitchen Ranges and Ovens) and for Certain Commercial and Industrial Equipment (Commercial Clothes Washers); Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2006–STD–0127]

RIN 1904–AB93

Energy Conservation Program: Energy Conservation Standards for Certain Consumer Products (Dishwashers, Dehumidifiers, Microwave Ovens, and Electric and Gas Kitchen Ranges and Ovens) and for Certain Commercial and Industrial Equipment (Commercial Clothes Washers)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking and notice of public meeting.

SUMMARY: On October 17, 2008, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NOPR) in which DOE proposed amendments to the energy conservation standards for several residential products and commercial equipment, including commercial clothes washers (CCWs). DOE decided to conduct additional, supplemental rulemaking analyses for CCWs to address certain alleged data problems. Today's document details these supplemental analyses and proposes revised CCW standard levels for consideration.

DATES: DOE will hold a public meeting on November 16, 2009, from 9 a.m. to 5 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting and receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., November 13, 2009.

DOE will accept comments, data, and information regarding the supplemental notice of proposed rulemaking (SNOPR) received not later than December 9, 2009. See section VII, ''Public Participation,'' of today's supplemental notice for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585. (Please note that foreign nationals visiting DOE Headquarters are subject to advanced security screening procedures. If you are a foreign national and wish to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.)

Any comments submitted must identify the SNOPR for Energy Conservation Standards for Home Appliance Products, and provide docket number EERE–2006–STD–0127 and/or regulatory information number (RIN) 1904–AB93. Comments may be submitted using any of the following methods:

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

2. *E-mail: home_appliance.rulemaking@ee.doe.gov*. Include docket number EE–2006–STD–0127 and/or RIN number 1904–AB93 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII, ''Public Participation,'' of today's supplemental notice for details.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20585–0121, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Witkowski, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7463. E-mail: *Stephen.Witkowski@ee.doe.gov*.

Ms. Francine Pinto, Esq. or Ms. Betsy Kohl, Esq., U.S. Department of Energy, Office of General Counsel, GC–71/72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–5000. E-mail: *Francine.Pinto@hq.doe.gov*, *Elizabeth.Kohl@hq.doe.gov*.

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I. Summary of the Proposed Rule

The Energy Policy and Conservation Act [1] (EPCA), as amended, provides that any amended energy conservation standard DOE prescribes, including those for CCWs, shall be designed to ''achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.'' (42 U.S.C. 6295(o)(2)(A) and 6316(a)) Furthermore, any new or amended standard must ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B) and 6316(a)) In accordance with these and other statutory criteria discussed in this notice, DOE proposes in today's SNOPR to amend the energy conservation standards for CCWs and raise efficiency levels as shown in Table I.1. The standards would apply to all CCWs manufactured in, or imported into, the United States 3 years after the publication of the final rule in the **Federal Register.**

TABLE I.1—EXISTING AND PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL CLOTHES WASHERS

Existing energy conservation standards (effective January 1, 2007)		Proposed energy conservation standards	
Equipment class	Standards	Equipment class	Standards
Commercial clothes washers	1.26 Modified Energy Factor/9.5 Water Factor.	Top-loading commercial clothes washers.	1.6 Modified Energy Factor/8.5 Water Factor.
		Front-loading commercial clothes washers.	2.00 Modified Energy Factor/5.5 Water Factor.

DOE estimates that the energy conservation standards proposed in today's SNOPR would save a significant amount of energy—an estimated 0.10 quadrillion British thermal units (Btu), or quads, of cumulative energy over 30 years (2013–2043). This amount is equivalent to 2 days of U.S. gasoline use. In addition, today's proposed standards for CCWs save over 143 billion gallons of cumulative water consumption over 30 years (2013–2043).

The cumulative national net present value (NPV) of total consumer costs and savings of today's proposed standards from 2013 to 2043, in 2008 dollars (2008$), ranges from $0.4 billion (7-percent discount rate) to $0.9 billion (3-percent discount rate). This is the estimated total value of future operating-cost savings minus the estimated increased equipment costs, discounted to the present year (2009). DOE estimates the CCW industry net present value (INPV) to be approximately $62 million in 2008$. If DOE adopts today's proposed standards, manufacturers expect a decline of between 7.8 percent and 11.4 percent of the INPV, which is approximately $5 to $7 million. However, the NPV for consumers (at the 7-percent discount rate) would exceed industry losses due to energy efficiency standards by at least 80 times.

DOE believes that the impacts of standards on consumers would be positive for CCWs, even though the standards may increase some initial costs. DOE estimates that today's proposed modified energy factor (MEF) and water factor (WF) standards for CCWs would increase the retail price by $214 per unit for top-loading washers and $23 for front-loading washers, but the operating cost savings outweigh these price increases, resulting in positive economic impacts to CCW consumers.

DOE's analyses indicate that the energy savings resulting from today's proposed standards would have benefits to utilities and to the environment. The energy saved is in the form of electricity and natural gas, and DOE expects the energy savings from today's proposed standards to eliminate the need for approximately 18 megawatts (MW) of generating capacity by 2043. This result reflects DOE's use of energy price projections from the U.S. Energy Information Administration (EIA)'s April 2009 release of the *Annual Energy Outlook 2009* (*AEO 2009*) reflecting provisions of the American Recovery and Reinvestment Act of 2009 (ARRA 2009; Pub. L. 111–5). DOE intends to use the most recently available version of EIA's *AEO* to generate the results for the final rule.

In addition, today's proposed standards would have environmental benefits, which would be estimated to result in cumulative (undiscounted) greenhouse gas emission reductions of 5.1 million tons (Mt) of carbon dioxide (CO_2) from 2013 to 2043. DOE estimates that the range of the monetized value of

[1] 42 U.S.C. 6291 *et seq.*

CO_2 emission reductions based on global estimates of the value of CO_2 is $13 million to $140 million at a 7-percent discount rate and $28 million to $303 million at a 3-percent discount rate. The standards for CCWs would also result in 3.04 kilotons (kt) of nitrogen oxides (NO_X) emissions reductions from 2013 to 2043. The standards for CCWs would also possibly result in power plant mercury (Hg) emissions reductions of up to 0.03 t from 2013 to 2043.

The benefits and costs of today's proposed standards can also be expressed in terms of annualized (2008$) values from 2013–2043. Estimates of annualized values are shown in Table I.2. The annualized monetary values are the sum of the annualized national economic value of operating savings benefits (energy, maintenance and repair), expressed in 2008$, plus the monetary values of the benefits of carbon dioxide emission reductions, otherwise known as the Social Cost of Carbon (SCC) expressed as $19 per metric ton of carbon dioxide, in 2007$. The $19 value is a central interim value from a recent interagency process. Although this $19 value represents emissions that are valued in 2007$, the monetary benefits of cumulative emissions reductions are reported in 2008$ so that they can be compared with the other costs and benefits in the same dollar units. The derivation of this value is discussed in section V.B.6. Although summing the value of operating savings to the values of CO_2 reductions provides a valuable perspective, please note the following: 1) the national operating savings are domestic U.S. consumer monetary savings found in market transactions while the CO_2 value is based on a range of estimates of imputed marginal social cost of carbon from $5 to $55 per metric ton (2007$), which are meant to reflect the global benefits of carbon dioxide reductions; and 2) the assessments of operating savings and CO_2 savings are performed with different computer models, leading to different time frames for analysis. The present value of national operating savings is measured for the period 2013–2065 (31 years from 2013 to 2043 inclusive, plus the lifetime of the longest-lived equipment shipped in the 31st year), then converted the annualized equivalent for the 31 years. The value of CO_2, on the other hand is meant to reflect the present value of all future climate related impacts, even those beyond 2065.

Using a 7-percent discount rate for the annualized cost analysis, the combined cost of the standards established in today's notice for CCWs is $23.4 million per year in increased equipment and installation costs, while the annualized benefits are $60.6 million per year in reduced equipment operating costs and $5.1 million in CO_2 reductions, for a net benefit of $42.2 million per year. Using a 3-percent discount rate, the cost of the standards established in today's final rule is $22.7 million per year in increased equipment and installation costs, while the benefits of today's standards are $72.8 million per year in reduced operating costs and $5.9 million in CO_2 reductions, for a net benefit of $56.0 million per year.

TABLE I.2—ANNUALIZED BENEFITS AND COSTS FOR COMMERCIAL CLOTHES WASHERS

Category	Primary estimate (AEO reference case)	Low estimate (low growth case)	High estimate (high growth case)	Units		
				Year dollars	Disc (in percent)	Period covered
Benefits						
Annualized Monetized (millions$/year)	60.6	54.9	66.6	2008	7	31
	72.8	65.3	80.4	2008	3	31
Annualized Quantified	0.14 CO_2 (Mt)	0.14 CO_2 (Mt)	0.14 CO_2 (Mt)	NA	7	31
	0.087 NO_X (kt)	0.087 NO_X (kt)	0.087 NO_X (kt)	NA	7	31
	0.001 Hg (t)	0.001 Hg (t)	0.001 Hg (t)	NA	7	31
	0.16 CO_2 (Mt)	0.16 CO_2 (Mt)	0.16 CO_2 (Mt)	NA	3	31
	0.094 NO_X (kt)	0.094 NO_X (kt)	0.094 NO_X (kt)	NA	3	31
	0.001 Hg (t)	0.001 Hg (t)	0.001 Hg (t)	NA	3	31
CO_2 Monetized Value (at $19/Metric Ton, millions$/year).	5.1	5.1	5.1	2008	7	31
	5.9	5.9	5.9	2008	3	31
Total Monetary Benefits (millions$/year)*	65.7	59.9	71.6	2008	7	31
	78.7	71.2	86.3	2008	3	31
Qualitative.						
Costs						
Annualized Monetized (millions$/year)	23.4	21.9	24.6	2008	7	31
	22.7	20.9	23.9	2008	3	31
Qualitative.						
Net Benefits/Costs						
Annualized Monetized, including Carbon Benefits* (million$/year).	42.2	38.1	47.0	2008	7	31
	56.0	50.3	62.4	2008	3	31
Qualitative.						

*Per the above discussion, this represents a simplified estimate that includes both 2007$ and 2008$.

In sum, today's proposed standards represent the maximum improvement in energy and water efficiency that is technologically feasible and economically justified. DOE found that the benefits of today's proposed standards (energy and water savings, consumer average life-cycle cost (LCC) savings, national NPV increase, and emissions reductions) outweigh the costs (loss of INPV and LCC increases for some consumers). DOE has concluded that the standards proposed in today's SNOPR are economically justified and technologically feasible, particularly since units achieving these standard levels are already commercially available. DOE notes that it considered higher efficiency levels as trial standard levels (TSLs), and is still considering them in this rulemaking; however, DOE tentatively believes that the burdens of the higher efficiency levels (loss of INPV and LCC increases for some consumers) outweigh the benefits (energy savings, LCC savings for some consumers, national NPV increase, and emissions reductions). After reviewing public comments on this SNOPR, DOE may ultimately decide to adopt one of the other TSLs or another value in between.

II. Introduction

A. Consumer Overview

DOE is proposing in today's SNOPR energy conservation standard levels for CCWs as shown in Table I.1 above. These proposed standards would apply to equipment manufactured or imported 3 years after the date the final rule is published in the **Federal Register**.[2]

DOE research suggests that commercial consumers will see benefits from today's proposed standards even though DOE expects the purchase price of the high efficiency CCWs to increase (by 2 to 28 percent) from the average price of this equipment today. However, the energy efficiency gains are expected to result in lower energy and water costs, saving consumers $53 to $103 per year on their energy and water bills, again depending on the equipment class. When these savings are summed over the lifetime of the equipment, consumers are expected to save an average of $20 to $190, depending on the equipment class, utility costs, and other factors. DOE estimates that the payback period for the more efficient, higher-priced equipment will range from 0.2 to 5.6 years, depending on the equipment class.

B. Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A–1 of Title III (42 U.S.C. 6311–6317) establishes an energy conservation program for ''Certain Industrial Equipment,'' which deals with a variety of commercial and industrial equipment (referred to hereafter as ''covered equipment'') including CCWs. (42 U.S.C. 6312; 6313(e)) EPCA sets both energy and water efficiency standards for CCWs, and authorizes DOE to amend both. (42 U.S.C. 6313(e))

Section 136(a) and (e) of the Energy Policy Act of 2005 (EPACT 2005; Pub. L. 109–058) added CCWs as equipment covered under EPCA and established standards for such equipment that is manufactured on or after January 1, 2007.[3] (42 U.S.C. 6311(1) and 6313(e)) These amendments to EPCA also require that DOE issue a final rule by January 1, 2010, to determine whether these standards should be amended. (EPACT 2005, section 136(e); 42 U.S.C. 6313(e)) If amended standards are justified, they would become effective no later than January 1, 2013. (*Id.*)

It is pursuant to the authority set forth above that DOE is conducting the present rulemaking for CCWs. The following discusses some of the key provisions of EPCA relevant to this standards-setting rulemaking.

Under EPCA, the overall program consists of the following core elements: (1) Testing; (2) labeling; and (3) Federal energy conservation standards. The Federal Trade Commission (FTC) is responsible for labeling equipment covered by part A, and DOE implements the remainder of the program. Under 42 U.S.C. 6293 and 6314, EPCA authorizes DOE, subject to certain criteria and conditions, to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered equipment. The test procedures for CCWs appear at 10 CFR part 430, subpart B, appendix J1 (pursuant to 10 CFR 431.154).

EPCA provides criteria for prescribing new or amended standards for covered products and equipment.[4] As indicated above, any new or amended standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(a)) The statute also provides that, in deciding whether a standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of the products or equipment subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products or equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the imposition of the standard;

(3) The total projected amount of energy (or, as applicable, water) savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products or equipment likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a))

Furthermore, EPCA contains what is commonly known as an ''anti-backsliding'' provision. (42 U.S.C. 6295(o)(1)) This provision prohibits the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product or equipment. Also, the Secretary may not prescribe an amended or a new standard if the Secretary finds that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any product type (or class) with performance characteristics, features, sizes, capacities, and volume that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4))

In addition, EPCA, as amended (42 U.S.C. 6295(o)(2)(B)(iii)), establishes a

[2] DOE anticipates publishing a final rule for commercial clothes washer energy conservation standards by January 1, 2010, pursuant to the requirements of the Energy Policy Act of 2005 (EPACT 2005; Pub. L. 109–058), which would make any amended standards effective on January 1, 2013.

[3] Under the statute, a CCW must have a modified energy factor (MEF) of at least 1.26 and a water factor (WF) of not more than 9.5.

[4] The EPCA provisions discussed in the remainder of this subsection directly apply to covered products, and also apply to certain covered equipment, such as CCWs, by virtue of 42 U.S.C. 6316(a). Note that the term ''product'' is used generally to refer to consumer appliances, while ''equipment'' is used generally to refer to commercial units.

rebuttable presumption that a standard is economically justified if the Secretary finds that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and as applicable, water) savings during the first year that the consumer will receive as a result of the standard,'' as calculated under the test procedure in place for that standard. (42 U.S.C. 6295(o)(2)(B)(iii)) See Section II.G.2.

In promulgating a standard for a type or class of covered product or equipment that has two or more subcategories, DOE must specify a different standard level from that which applies generally to such type or class of products or equipment ''for any group of covered products which have the same function or intended use, if * * * covered products within such group—(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard'' than applies or will apply to the other products. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies such a different standard for a group of equipment, DOE must consider ''such factors as the utility to the consumer of such a feature'' and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE can, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA found in 42 U.S.C. 6297(d). Specifically, States that regulate an energy conservation standard for a type of covered product for which there is a Federal energy conservation standard may petition the Secretary for a DOE rule that allows the State regulation to become effective with respect to such covered product. (42 U.S.C. 6297(d)(1)(A)) DOE must prescribe a rule granting the petition if the Secretary finds that the State has established by a preponderance of the evidence that its regulation is needed to meet ''unusual and compelling State or local energy * * * interests.'' (42 U.S.C. 6297(d)(1)(B))

C. Background

1. Current Standards

EPCA, as amended by EPACT 2005, prescribes energy conservation standards for CCWs manufactured on or after January 1, 2007. (42 U.S.C. 6313(e)) These standards require that CCWs have an MEF of at least 1.26 cubic feet of capacity (ft^3) per kilowatt-hour (kWh) and a WF of not more than 9.5 gallons of water (gal) per ft^3. (*Id.;* 10 CFR 431.156)

2. History of Standards Rulemaking

To initiate the current rulemaking to consider energy conservation standards, on March 15, 2006, DOE published on its Web site a document titled, *Rulemaking Framework for Commercial Clothes Washers and Residential Dishwashers, Dehumidifiers, and Cooking Products* (Framework Document).[5] 71 FR 15059 (March 27, 2006). The Framework Document described the procedural and analytical approaches that DOE anticipated using to evaluate energy conservation standards for these products, and identified various issues to be resolved in conducting the rulemaking. DOE held a public meeting on April 27, 2006, to present the Framework Document, to describe the analyses it planned to conduct during the rulemaking, to receive comments from interested parties, and to inform and facilitate interested parties' involvement in the rulemaking. DOE received 11 written comments in response to the Framework Document after the public meeting.

On December 4, 2006, DOE posted two spreadsheet tools for this rulemaking on its Web site.[6] The first tool calculates LCC and payback periods (PBPs) and included spreadsheets for: (1) Dishwashers; (2) dehumidifiers; (3) cooktops; (4) ovens; (5) microwave ovens; and (6) CCWs. The second tool—the national impact analysis (NIA) spreadsheets—calculate the impacts on shipments and the national energy savings (NES) and NPV at various candidate standard levels for: (1) Dishwashers; (2) dehumidifiers; (3) cooktops and ovens; (4) microwave ovens; and (5) CCWs.

DOE published the advance notice of proposed rulemaking (ANOPR) for this rulemaking on November 15, 2007 (November 2007 ANOPR) (72 FR 64432), and held a public meeting on December 13, 2007, to present and seek comment on the November 2007 ANOPR analytical methodology and results. The November 2007 ANOPR included background information on the history and conduct of this rulemaking. 72 FR 64432, 64438–39 (Nov. 15, 2007) In the November 2007 ANOPR, DOE described and sought further comment on the analytical framework, models, and tools (*e.g.,* LCC and NIA spreadsheets) it was using to analyze the impacts of energy conservation standards for these products. In conjunction with the November 2007 ANOPR, DOE also posted on its Web site the complete November 2007 ANOPR technical support document (TSD). The TSD included the results of a number of DOE's preliminary analyses, including: (1) The market and technology assessment; (2) screening analysis; (3) engineering analysis; (4) energy and water use determination; (5) markups analysis to determine equipment price; (6) LCC and PBP analyses; (7) shipments analysis; (8) NIA; and (9) manufacturer impact analysis (MIA). In the November 2007 ANOPR and at the public meeting, DOE invited comment in particular on the following issues concerning CCWs: (1) Product classes; (2) horizontal-axis designs; (3) technologies unable to be analyzed and exempted product classes, including potential limitations of existing test procedures; (4) per-cycle energy consumption; (5) consumer prices; (6) repair and maintenance costs; (7) efficiency distributions in the base case; (8) shipments forecasts; (9) base-case and standards-case forecasted efficiencies; and (10) TSLs. 72 FR 64432, 64512–14 (Nov. 15, 2007).

On October 17, 2008, DOE published a NOPR (October 2008 NOPR) in the **Federal Register**, in which it proposed amended energy conservation standards for certain products and equipment, including CCWs. 73 FR 62034. The energy conservation standards proposed in the October 2008 NOPR for CCWs are shown in Table II.1.

[5] This document is available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/clothes_washers.html.*

[6] These spreadsheets are available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards.*

TABLE II.1—COMMERCIAL CLOTHES WASHER ENERGY CONSERVATION STANDARDS PROPOSED IN THE OCTOBER 2008 NOPR

Equipment	Modified energy factor, ft^3/kWh	Water factor, gal/ft^3
Top-loading CCWs	1.76	8.3
Front-loading CCWs	2.0	5.5

In the October 2008 NOPR, DOE described and sought further comment on the analytical framework, models, and tools (*e.g.,* LCC and NIA spreadsheets) it was using to analyze the impacts of energy conservation standards for this equipment. In conjunction with the October 2008 NOPR, DOE also posted on its Web site the complete technical support document (TSD), which along with the October 2008 NOPR, is available at *http://www1.eere.energy.gov/buildings/appliance_standards/.* The TSD included the results of a number of DOE's analyses, including: (1) The market and technology assessment; (2) screening analysis; (3) engineering analysis; (4) energy and water use determination; (5) markups analysis to determine equipment price; (6) LCC and PBP analyses; (7) shipments analysis; (8) NES and national impact analyses; and (9) MIA. In the October 2008 NOPR and at the public meeting held on November 13, 2008 (referred to as the ''November 2008 public meeting''), DOE invited comment in particular on the following issues concerning CCWs: (1) The efficiency levels; (2) DOE's determination of the maximum technologically feasible (max-tech) efficiency levels for top-loading and front-loading CCWs; (3) the magnitude of possible equipment class shifting to front-loading CCWs; (4) the analysis and data relevant to the price elasticity of demand for calculating the anticipated energy and water savings at different TSLs; (5) the analysis of consumer knowledge of the Federal ENERGY STAR program and its potential as a resource for increasing knowledge of the availability and benefits of energy efficient appliances in the home appliance consumer market; (6) discount rates other than 7 percent and 3 percent real to discount future emissions reductions; (7) data that might enable DOE to test for market failures or other specific problems for CCWs; and (8) the determination of anticipated environmental impacts of the standards proposed in the October 2008 NOPR, particularly with respect to the methods for valuing the expected CO_2 and NO_X emissions savings. 73 FR 62034, 62133 (Oct. 17, 2008).

The October 2008 NOPR also included background information, in addition to that set forth above, on the history and conduct of this rulemaking. 73 FR 62034, 62040–62041 (Oct. 17, 2008). DOE presented the methodologies and results for the October 2008 NOPR analyses at the November 2008 public meeting. Comments presented by interested parties during this meeting and submitted in response to the October 2008 NOPR concerning the accuracy of the stated max-tech CCW efficiency level led to a thorough investigation of CCW efficiencies and today's SNOPR. DOE subsequently tested the max-tech unit at an independent test facility, revised the max-tech level, updated the analysis, and is publishing the SNOPR to allow interested parties to comment on the revised efficiency level proposals.

DOE expects to issue a final rule in this rulemaking no later than January 1, 2010, as required by EPCA, as amended by EPACT 2005 (42 U.S.C. 6313(e)). Based on this schedule, the estimated effective date of any amended energy conservation standards for this equipment would be January 1, 2013, 3 years after the final rule is published in the **Federal Register.**

D. Test Procedures

EPCA directs DOE to use the same test procedures for CCWs as those established by DOE for residential clothes washers (RCWs). (42 U.S.C. 6314(a)(8)) 73 FR 62034, 62043–62044 (Oct. 17, 2008). While DOE believes commercial laundry practices likely differ from residential practices,[7] DOE concluded in the October 2008 NOPR that the existing clothes washer test procedure (at 10 CFR part 430, subpart B, appendix J1) adequately accounts for the efficiency rating of CCWs, and that DOE's methods for characterizing energy and water use in the October 2008 NOPR analyses adequately accounted for the consumer usage patterns specific to CCWs.

In response to the October 2008 NOPR, Alliance Laundry Systems (Alliance), GE Consumer & Industrial (GE), and AHAM agreed with DOE's conclusion that the DOE clothes washer test procedure is adequate for rating CCWs. (Alliance, Public Meeting Transcript, No. 40.5 at p. 22; Alliance, No. 45 at p. 1; GE, No. 48 at p. 4; AHAM, Public Meeting Transcript, No. 40.5 at pp. 26–27; AHAM, No. 47 at p.4)[8] DOE did not receive any comments objecting to the use of the DOE clothes washer test procedure for CCWs. Therefore DOE continues to consider the existing DOE test procedure adequate to measure energy and water consumption of CCWs.

E. Technological Feasibility

1. General

DOE considers a design option to be technologically feasible if it is in use by the respective industry or if research has progressed to the development of a working prototype. Therefore, in each standards rulemaking, DOE conducts a screening analysis, based on information it has gathered regarding existing technology options and prototype designs. In consultation with manufacturers, design engineers, and other interested parties, DOE develops a list of design options for consideration in the rulemaking. Once DOE has determined that a particular design option is technologically feasible, it further evaluates each design option in light of the following three additional criteria: (a) Practicability to manufacture, install, and service; (b) adverse impacts on product utility or availability; or (c) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(3) and (4). All design options that pass these screening criteria are candidates for further assessment in the engineering and subsequent analyses in the NOPR (or SNOPR) stage.

DOE published a list of evaluated CCW technologies in the November 2007 ANOPR. 72 FR 64432, 64458 (Nov. 15, 2007). For the reasons described in

[7] CCWs are typically used more frequently and filled with a larger load than RCWs.

[8] A notation in the form ''Alliance, No. 45 at p. 1'' identifies a written comment (1) made by Alliance Laundry Systems (Alliance), (2) recorded in document number 45 that is filed in the docket of this rulemaking (Docket No. EE–2006–STD–0127), maintained in the Resource Room of the Building Technologies Program, and (3) which appears on page 1 of document number 45.

the November 2007 ANOPR and in chapter 4 of the SNOPR TSD, DOE is not considering the following design options, as they do not meet one or more of the screening criteria: bubble action, electrolytic disassociation of water, ozonated laundering, reduced thermal mass, suds saving, and ultrasonic washing. In this supplemental notice, DOE has not screened out any additional technology options that were retained in the October 2008 NOPR analyses. No comments were received objecting to the technology options which were screened out in the October 2008 NOPR. 73 FR 62034, 62052 (Oct. 17, 2008).

Therefore, DOE believes all of the efficiency levels evaluated in this notice, which are based upon the retained design options, are technologically feasible. For more detail on DOE's method for developing CCW technology options and the process for screening these options, refer to the chapters 3 and 4 of the SNOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE considers an amended or new standard for a type (or class) of equipment such as front-loading or top-loading CCWs, it must ''determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible'' for such equipment. (42 U.S.C. 6295(p)(2) and 6316(a)) For the October 2008 NOPR, DOE determined the max-tech efficiency levels for front-loading and top-loading CCWs in the engineering analysis, based on published MEF and WF values of commercially available equipment. (See chapter 5 in the NOPR TSD.) In proposing these max-tech levels, DOE noted that some CCWs exceed the max-tech MEF or WF levels, but not both. For example, two front-loading models exceed the max-tech MEF—they are rated at 2.45 and 2.68 MEF, respectively, in the Consortium for Energy Efficiency (CEE) qualifying product list for its Commercial, Family-Sized Washer Initiative—but don't achieve a max-tech WF level—they are rated at 5.69 and 5.47 WF, respectively. In the California Energy Commission (CEC) equipment database for CCWs, DOE found one top-loading model that exceeds the max-tech WF—it is rated at 7.3 WF—but not the max-tech MEF level—it is rated at 1.32 WF. This model has been discontinued, as discussed in the November 2007 ANOPR and the October 2008 NOPR TSD. The max-tech efficiency levels proposed in the October 2008 NOPR were selected to represent the best available combinations of high MEF and low WF for each equipment class.

For the October 2008 NOPR, DOE proposed the max-tech levels shown in Table II.2. 73 FR 62034, 62036 (Oct. 17, 2008).

TABLE II.2—COMMERCIAL CLOTHES WASHER MAX-TECH EFFICIENCY LEVELS PROPOSED IN THE OCTOBER 2008 NOPR

Equipment class	Max-tech level	
	MEF, ft^3/kW	WF, gal/ft^3
Top-Loading CCWs ..	1.76	8.3
Front-Loading CCWs	2.35	4.4

According to the CEE database, three front-loading CCWs rated at the max-tech efficiency level are on the market in the United States. One model listed in the database which exceeds the max-tech level is rated at (2.84 MEF/3.68 WF), but DOE determined this CCW has yet to be sold in the United States. The front-loading max-tech level was based on a single model listed in the CEC database.

The max-tech top-loading CCW efficiency rating in the October 2008 NOPR was questioned by Alliance at the November 2008 NOPR meeting. (Alliance, Public Meeting Transcript, No. 40.5 at pp. 90–92) In response, DOE contracted an independent testing laboratory to verify the performance ratings for the max-tech top-loading CCW. The laboratory results (based on a 3-unit sample) suggest that the unit achieves 1.63 MEF/8.4 WF. Based on this information, for the SNOPR analysis, DOE revised the max-tech top-loading CCW level downward to 1.60 MEF/8.5 WF, a level proposed in the October 2008 NOPR as a ''gap-fill'' level and one which DOE concludes is attainable by the max-tech CCW model. For more details on this selection of max-tech levels for the SNOPR, see section III.C.1 of today's supplemental notice.

In sum, Table II.3 lists the max-tech levels that DOE is proposing for today's SNOPR. Today's proposed front-loading max-tech level is the same as in the October 2008 NOPR, whereas today's proposed top-loading max-tech level has been revised based on the independent test results.

TABLE II.3—COMMERCIAL CLOTHES WASHER MAX-TECH EFFICIENCY LEVELS PROPOSED FOR THIS SNOPR

Equipment class	Max-tech level	
	MEF, ft^3/kW	WF, gal/ft^3
Top-Loading CCWs ..	1.60	8.5
Front-Loading CCWs	2.35	4.4

F. Energy Savings

1. Determination of Savings

DOE used its NIA spreadsheet tool to estimate energy savings from amended standards for CCWs. (Section III.E of today's supplemental notice and chapter 11 of the SNOPR TSD describe the NIA spreadsheet model.) DOE forecasted energy savings over the period of analysis (beginning in 2013, the year that amended standards would go into effect, and ending in 2043) for each TSL, relative to the base case, which represents the forecast of energy consumption in the absence of amended energy conservation standards. DOE quantified the energy savings attributable to amended energy conservation standards as the difference in energy consumption between the standards case and the base case. The base case represents the forecast of energy consumption in the absence of amended energy conservation standards. The base case considers market demand for more efficient equipment.

The NIA spreadsheet tool calculates the electricity savings in ''site energy'' expressed in kWh. Site energy is the energy directly consumed on location by an individual equipment. DOE reports national energy savings on an annual basis in terms of the aggregated source energy savings, which is the savings of energy that is used to generate and transmit the energy consumed at the site. To convert site energy to source energy, DOE derived conversion factors, which change with time, from the March 2009 release of the *AEO 2009.* (See TSD chapter 11 accompanying today's supplemental notice for further details.)

2. Significance of Savings

EPCA, as amended, prohibits DOE from adopting a standard for a product if that standard would not result in ''significant'' energy savings. (42 U.S.C. 6295(o)(3)(B)) While the Act does not define the term ''significant,'' the U.S. Court of Appeals for the District of Columbia, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355,

1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in this context to be savings that were not ''genuinely trivial.'' The energy savings for energy conservation standards at each of the TSLs considered in this rulemaking are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

G. Economic Justification

1. Specific Criteria

As noted earlier, EPCA provides seven factors to be evaluated in determining whether an energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)). The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

DOE uses an annual-cash-flow approach in determining the quantitative impacts of a new or amended standard on manufacturers. This includes both a short-term assessment, based on the cost and capital requirements during the period between the announcement of a regulation and the time when the regulation becomes effective, and a long-term assessment. The impacts analyzed include INPV (which values the industry on the basis of expected future cash flows), cash flows by year, changes in revenue and income, and other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, with particular attention to impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment, manufacturing capacity, plant closures, and loss of capital investment. DOE also takes into account cumulative impacts of different regulations on manufacturers. For more details on this analysis, see section III.G.

For commercial consumers, measures of economic impact include the changes in LCC and payback period for the equipment at each TSL. Under EPCA, the LCC is one of the seven factors to be considered in determining economic justification. (42 U.S.C. 6295(o)(2)(B)(i)(II)) It is discussed in detail in the section below.

b. Life-Cycle Costs

The LCC is the sum of the purchase price of equipment (including the installation) and the operating expense (including energy and maintenance expenditures), discounted over the lifetime of the equipment.

In this rulemaking, DOE calculated both LCC and LCC savings for various CCW efficiency levels. DOE established the variability and uncertainty in energy and water use by defining the uncertainty and variability in the use (cycles per day) of the equipment. The variability in energy and water pricing were characterized by regional differences in energy and water prices. To account for uncertainty and variability in other inputs, such as equipment lifetime and discount rate, DOE used a distribution of values with probabilities attached to each value. For each consumer with a CCW, DOE sampled the values of these inputs from the probability distributions. As a result, the analysis produced a range of LCCs. This approach permits DOE to identify the percentage of consumers achieving LCC savings or attaining certain payback values due to an increased energy conservation standard, in addition to the average LCC savings or average payback for that standard. DOE presents the LCC savings as a distribution, with a mean value and a range. In the analysis prepared for the October 2008 NOPR, DOE assumed that the consumer will purchase the equipment in 2012. For today's SNOPR, that assumption has been changed to 2013 due to the expected effective date of any amended standards. See section III.D for more details on the analysis.

c. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, EPCA requires DOE, in determining the economic justification of a proposed standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As in the October 2008 NOPR, DOE used the NIA spreadsheet results in its consideration of total projected savings expected to be directly attributable to the considered standard levels. See section III.E for more details on this analysis.

d. Lessening of Utility or Performance of Equipment

In establishing classes of equipment, DOE considered whether the evaluated design options would likely lessen the utility or performance of CCWs. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) In the October 2008 NOPR, DOE determined that none of the considered TSLs would reduce the utility or performance of the equipment under consideration in the rulemaking. Specifically, the standards proposed in the October 2008 NOPR would maintain the consumer utility of washing clothes in a washer with either top or front access. 73 FR 62034, 62047 (Oct. 17, 2008). This conclusion remains the same for the proposed standards in today's SNOPR. As in the October 2008 NOPR, the efficiency levels considered in today's SNOPR for both equipment classes require no changes in equipment design or unusual installation requirements that could reduce the utility or performance of CCWs.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from standards. It directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary, not later than 60 days after the publication of a proposed rule, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)). DOE received the Attorney General's determination dated December 16, 2008. It is discussed in section V.B.5 below, and is reprinted at the end of this SNOPR. Impacts on manufacturers are also discussed in section III.G below.

f. Need of the Nation To Conserve Energy

The non-monetary benefits of today's proposed standards are likely to be reflected in improvements to the security and reliability of the Nation's energy system–namely, reductions in the overall demand for energy will result in reduced costs for maintaining reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may impact the Nation's needed power generation capacity. This analysis captures the effects of efficiency improvements on electricity consumption by the equipment which is the subject of this rulemaking.

Today's proposed standards also are likely to result in improvements to the environment. In quantifying these improvements, DOE has defined a range of primary energy conversion factors and associated emissions reductions based on the estimated level of power generation displaced by energy conservation standards. DOE reports the environmental effects from each TSL in an environmental assessment in chapter 16 of the SNOPR TSD. (42. U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(a)) See section III.J for more details on this analysis.

g. Other Factors

The Secretary, in determining whether a standard is economically justified, may consider other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) In considering amended standards for today's SNOPR, the Secretary found no relevant factors other than those identified elsewhere in today's SNOPR.

2. Rebuttable Presumption

As set forth under 42 U.S.C. 6295(o)(2)(B)(iii), there is a rebuttable presumption that an energy conservation standard is economically justified if the increased installed cost for equipment that meets the standard is less than three times the value of the first-year energy savings resulting from the standard (and water savings in the case of a water efficiency standard). DOE's LCC and PBP analyses generate values that calculate the payback period for consumers of equipment meeting potential energy conservation standards, which includes, but is not limited to, the 3-year payback period contemplated under the rebuttable presumption test discussed above. (See chapter 8 of the TSD that accompanies this notice.) However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). Section III.D.13 of today's supplemental notice addresses the rebuttable-presumption payback calculation.

III. Methodology and Revisions to the Analyses Employed in the October 2008 Proposed Rule

DOE used economic models to estimate the impacts of the TSLs used in weighing the benefits and burdens of amended standards for the equipment that is the subject of this rulemaking. Specifically, DOE developed the relationship between cost and efficiency for this equipment, and calculated the simple payback period for the purposes of addressing the rebuttable presumption that a standard with a payback period of less than 3 years is economically justified. The LCC spreadsheet calculates the consumer benefits and payback periods for amended energy conservation standards. The NIA spreadsheet provides shipments forecasts and then calculates NES and NPV impacts of potential amended energy conservation standards. DOE also assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM).

Additionally, DOE estimated the impacts of energy conservation standards due to equipment on utilities and the environment. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses. The NEMS model simulates the energy economy of the United States and has been developed over several years by the EIA primarily for the purpose of preparing the *AEO.* The NEMS produces forecasts for the United States that are available in the public domain. The version of NEMS used for appliance standards analysis is called NEMS–BT and is primarily based on the *AEO 2009* April Release with minor modifications.[9] The NEMS–BT offers a sophisticated picture of the effect of standards, since it accounts for the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Equipment Classes

In general, when evaluating and establishing energy conservation standards, DOE divides covered products or equipment into classes by the type of energy used, capacity, or other performance-related features that affect consumer utility and efficiency. (42 U.S.C. 6295(q); 6316(a)) Different energy conservation standards may apply to different equipment classes. *Id.*

In the October 2008 NOPR, DOE proposed separate equipment classes and accompanying standards for top-loading and front-loading CCWs with separate standards for each class. 73 FR 62034, 62036 (Oct. 17, 2008). Thus the October 2008 NOPR represented a change from the November 2007 ANOPR and from EPACT 2005 [10], which placed all CCWs into a single equipment class with a single energy efficiency and water efficiency standard. The October 2008 NOPR stated that DOE believes it has the authority to establish additional equipment classes within an equipment category, if warranted. DOE determined in the October 2008 NOPR that two equipment classes are warranted because an amended standard would set MEF for all CCWs at a level significantly higher than what the max-tech for top-loading machines can attain today, and effectively eliminate top-loading CCWs from the market. *Id.*

DOE explained the basis of its authority to establish separate classes, and noted that it had previously established and used classes for residential clothes washers (RCW) in previous rulemakings and had cited the likely elimination of one of these classes as one of several reasons for denying the California Energy Commission's (CEC) petition for waiver from Federal preemption of its RCW regulation. DOE then concluded that, ''Given the similarities in technologies and design and operating characteristics between RCWs and CCWs, * * * the axis of access must be accorded similar treatment in the context of the current CCW rulemaking.'' DOE also asserted that, ''If DOE were to propose an amended standard for CCWs under the statutory criteria set forth in EPCA based upon a single product class, the result would be a standard that would effectively eliminate top-loading CCW's from the market * * *;''

Alliance, GE, Whirlpool Corporation (Whirlpool), and AHAM supported the two equipment classes as proposed in the October 2008 NOPR. (Alliance, Public Meeting Transcript, No. 40.5 at p. 22; Alliance, No. 45 at p. 1; GE, Public Meeting Transcript, No. 40.5 at p. 31; GE, No. 48 at p. 4; Whirlpool, Public Meeting Transcript, No. 40.5 at p. 28; Whirlpool, No. 50 at pp. 2–3, AHAM, Public Meeting Transcript, No. 40.5 at p. 26; AHAM, No. 47 at p. 4)

ASAP, American Council for an Energy-Efficient Economy (ACEEE), American Rivers, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships, Northwest Power and Conservation Council, Southern California Edison, Southern California Gas Company, and San Diego Gas and Electric Company, jointly, (the Joint Comment) and ASAP, individually, stated that they dispute DOE's conclusion that two equipment classes are required under the law to preserve the availability of top-loading machines. (Joint Comment, No. 44 at pp. 5–6; ASAP, Public Meeting Transcript, No. 40.5 at p. 33) EarthJustice (EJ) noted that a horizontal-axis CCW, like some horizontal-axis residential models, could be designed with top-loading access through a hatch. (EJ, Public Meeting Transcript, No. 40.5 at p. 26)

[9] The EIA approves the use of the name NEMS to describe only an *AEO* version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from *AEO* assumptions, the name NEMS–BT refers to the model as used here. (''BT'' stands for DOE's Building Technologies Program.) For more information on NEMS, refer to *The National Energy Modeling System: An Overview,* DOE/EIA–0581 (98) (Feb. 1998)(available at: *http://tonto.eia.doe.gov/FTPROOT/forecasting/058198.pdf*).

[10] 42 U.S.C. 6313(e); codified at 10 CFR 431.156.

The Joint Comment stated that the ability to load a CCW from the front is substantially the same as the ability to load from the top. (Joint Comment, No. 44 at appendix A, pp. 1–4) Thus, the unavailability of top-loading CCWs would have no effect on equipment utility.

In response to the EarthJustice, DOE examined the potential use of top-loading, horizontal-axis machines in the CCW market. While a top-loading horizontal-axis design can provide access similar to traditional vertical-axis clothes washers, the consumer utility of a top-loading, horizontal-axis clothes washer may not be sufficiently comparable to that of a top-loading, vertical-axis clothes washer, since users of top-loading horizontal-axis units must perform multiple actions to undo and re-secure the hatch every time they access the inside of the wash basket. DOE research suggests that the added complication in loading and unloading such a clothes washer appears to be more relevant in a shared laundry and laundromat setting and less relevant in an institutional setting due to consumer education issues. In any case, DOE knows of no top-loading, horizontal-axis machines in the U.S. market for CCWs.

As discussed in the October 2008 NOPR, DOE concluded that the method of ''loading'' clothes (*i.e.,* the axis of access) is a ''feature'' of RCWs within the meaning of 42 U.S.C. 6295(o)(4). Due to similarities in technologies and in design and operating characteristics between RCWs and CCWs, the axis of access may also be considered a feature in the context of this CCW rulemaking. Therefore, DOE tentatively concludes that top-loading, vertical-axis CCWs provide unique utility, and that, as determined in the October 2008 NOPR, axis of access is a feature pursuant to EPCA. Thus, DOE is retaining the two proposed equipment classes from the October 2008 NOPR in today's SNOPR.

DOE seeks comment as to whether the method of ''loading'' clothes washers, or any other characteristic commonly associated with traditional ''top-loading'' or ''front-loading'' clothes washers are ''features'' within the meaning of 42 U.S.C. 6295(o)(4) in EPCA and whether the availability of such feature(s) would likely be affected by eliminating the separate classes for these equipment types previously established by DOE. This is identified as Issue 1 in section VII.E of today's supplemental notice (Issues on Which DOE Seeks Comment.)

As noted above, in the October 2008 NOPR, DOE took the position that EPCA does not permit adoption of a standard that would eliminate top-loading CCWs because the method of loading is a ''feature.'' 73 FR 62034, 62049–50. Furthermore, in DOE's denial of the CEC's petition for waiver from Federal preemption (71 FR 78157 (December 28, 2006)) and the ensuing litigation, *California Energy Commission* v. *DOE,* Case. No. 07–71576 (9th Cir.), DOE took the position that it could not waive Federal preemption, in part because the proposed California regulation of residential clothes washer water usage would result in the unavailability of top-loading residential clothes washers in the California market, based on DOE's evaluation of the clothes washer market in 2006.

DOE is willing to reconsider its previous conclusions as part of this rulemaking. More specifically, DOE is soliciting public comments on whether one or more of the characteristics commonly associated with different types of clothes washers, such as method of loading, presence or absence of agitators, ability to interrupt cycles, and possibly others, provide consumer utility that should, under existing law, be recognized and protected by DOE through the maintenance or establishment of separate equipment classes. DOE also seeks comments as to whether, as a consequence of market and technology developments, it should maintain the same equipment classes for commercial clothes washers as it does for residential clothes washers.

DOE notes that, if warranted by the public comments received and its further consideration of this issue, it were to establish a single equipment class in setting standards for CCWs, DOE intends to give considerable weight to the potential adverse effects of a single equipment class efficiency standard on competition in the CCW market. That is, DOE does not intend to set a standard that would produce significant adverse impacts on competition in this market.

B. Technology Assessment

For the technology assessment in the October 2008 NOPR analyses, DOE considered all RCW and CCW technology options that it is aware are or have been incorporated into working prototypes or commercially available clothes washers at the time of the analysis. ASAP stated that DOE should give more serious consideration to innovations currently in production on the RCW market. (ASAP, Public Meeting Transcript, No. 40.5 at pp. 33–34) DOE did not receive information on specific technologies for RCWs that it did not consider. Further, DOE notes that it considered as design options many technologies that are found in both RCWs and CCWs. Of the technology options screened out, only suds saving [11] has appeared previously as a feature in commercially available RCWs. DOE research suggests that clothes washers incorporating a suds-saving feature have not been available on the market since 2005, and further DOE research suggests that suds saving would be impractical to install in a commercial setting for reasons such as space limitations, questionable energy savings, incompatibility with CCW usage patterns, and lack of consumer acceptance. Therefore, DOE concludes that suds-savings is an RCW feature that was appropriately screened out for the CCW SNOPR analysis.

In addition, DOE has gathered and analyzed data published by CEC, CEE, and the ENERGY STAR Program to provide an overview of the energy efficiency levels achieved in today's CCWs and RCWs. Certain information about technologies associated with high-efficiency clothes washers can be determined by evaluating the models in these databases. DOE found that all front-loading CCWs on the market today are more efficient than top-loading CCW models. No top-loading CCW listed in these databases has an MEF greater than 1.76, whereas the majority of front-loading CCWs are listed as having MEFs greater than 2.0. Similarly, no top-loading CCW is rated as having a WF below 8.0, whereas the majority of front-loading CCWs have rated WFs below 7.0. In contrast, DOE research suggests that the most efficient vertical-axis RCWs achieve efficiency levels comparable to some horizontal-axis CCWs on the market today.[12] High efficiency, vertical-axis platforms that do not employ an agitator have been sold into the RCW market for several

[11] A suds-saving feature allows water from one wash cycle to be reused in the next wash cycle. After agitation, sudsy wash water is pumped into a separate storage tub, remaining there until the next wash cycle. While the water is stored, soil settles to the bottom of the tub. During the next wash cycle, all but an inch of the water is pumped back into the washer tub for use again. Clothes washers with the suds-saving feature must be larger than typical clothes washers in order to accommodate the additional storage tub.

[12] Typically, vertical-axis clothes washers are accessed from the top (also known as ''top-loaders''), while horizontal-axis clothes washers are accessed from the front (also known as ''front-loaders''). However, a limited number of residential horizontal-axis clothes washers which are accessible from the top (using a hatch in the wash basket) are currently available, although DOE is unaware of any such CCWs on the market. For the purposes of this analysis, the terms ''vertical-axis'' and ''top-loading'' will be used interchangeably, as will the terms ''horizontal-axis'' and ''front-loading.'' Additionally, clothes washers that have a wash basket whose axis of rotation is tilted from horizontal are considered to be horizontal-axis machines.

years, but have yet to be released in a CCW form. DOE expects manufacturers will continue to introduce new features first in the higher-volume residential markets before transitioning them to commercial applications. At this time, however, DOE is not aware of such technologies being incorporated in either commercially available CCWs or working CCW prototypes, and therefore did not consider them in the SNOPR analyses.

Whirlpool stated that there are considerable differences between RCWs and CCWs, including, but not limited to heavier duty components and a smaller basket utilized in CCW's. According to Whirlpool, the smaller basket is required by CCW customers, and it is inherently more difficult to achieve high efficiency with smaller baskets. (Whirlpool, No. 50 at p. 3)

For these reasons, DOE believes it has adequately considered RCW technologies that may be applicable to CCWs in its technology assessment. See chapter 3 of the SNOPR TSD for more information on the technologies considered.

C. Engineering Analysis

The purpose of the engineering analysis is to characterize the relationship between the incremental manufacturing cost and efficiency improvements of CCWs. DOE used this cost-efficiency relationship as input to the PBP, LCC, and NES analyses.

To estimate incremental manufacturing costs, DOE has identified three basic methodologies: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which provides the incremental costs of moving to higher energy efficiency levels, without regard to the particular design option(s) used to achieve such increases; and (3) the cost-assessment (or reverse-engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed data on costs for parts and material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels. DOE conducted the engineering analysis for this rulemaking using the efficiency-level approach. For this analysis, DOE relied upon efficiency data published in multiple databases, including those published by CEC, CEE and ENERGY STAR, which were supplemented with limited laboratory testing, data gained through reverse-engineering analysis, and primary and secondary research.

1. Efficiency Levels

The efficiency levels for CCWs are defined by two factors normalized by wash basket volume—MEF and WF. These two variables are only directly related to each other via the average hot water usage by a clothes washer, as measured by the DOE test procedure. Other measured parameters affect only one variable or the other. For example, cold water consumption only affects the WF, while remaining moisture content (RMC) only affects the MEF. (See chapter 5 of the SNOPR TSD for further explanation.)

In the October 2008 NOPR, DOE proposed the following efficiency levels for CCWs.

TABLE III.1—COMMERCIAL CLOTHES WASHER EFFICIENCY LEVELS PROPOSED IN THE OCTOBER 2008 NOPR

Efficiency level	Modified energy factor (ft^3/kWh)/water factor (gal/ft^3)	
	Top-loading	Front-loading
Baseline	1.26/9.5	1.72/8.0
1	1.42/9.5	1.80/7.5
2	1.60/8.5	2.00/5.5
3	1.76/8.3	2.20/5.1
4	N/A	2.35/4.4

a. Revised Efficiency Levels

In response to the October 2008 NOPR, Alliance disputed DOE's finding that the proposed max-tech level for top-loading CCWs is technically feasible, based on Alliance's internal testing of one max-tech unit. Alliance stated that there were numerous inconsistencies related to the stated efficiencies of the max-tech top-loading CCW, the GE WNRD2050G, in databases such as those published by the CEC and ENERGY STAR. (Alliance, Public Meeting Transcript, No. 40.5 at pp. 22–24 and 90–92) According to Alliance, its own tests for the same model did not achieve the published efficiency levels of 1.76 MEF/8.3 WF. Alliance suggested that DOE should test and confirm the max-tech model's efficiency before continuing to use it as the basis for the max-tech efficiency levels proposed in the October 2008 NOPR. (Alliance, No. 45 at Attachment 2, pp. 4–5)

GE responded in its written comments that there was indeed a transposition error, which led to the inconsistencies noted by Alliance. GE stated that the equipment label indicated an energy rating of 472 kWh per year, equaling 1.204 kWh per cycle, meaning that consumers were getting a more efficient product than the energy rating contained on the label. GE stated that it takes any labeling error very seriously, and corrected the issue immediately upon its discovery. (GE, No. 48 at pp. 4–5). DOE review of present and past ENERGY STAR databases for CCWs failed to find an entry for the WNRD2050G. Based on market research and the CEC addition of the unit in December 2007, it appears that the WNRD2050G was released into production in December 2007. Thus, because the model's stated WF (8.3) was above the cutoff for ENERGY STAR eligibility (8.0) at that time, DOE concludes that the WNRD2050G was never listed in the ENERGY STAR database for CCWs.

In response to comments about the validity of published CCW data, the DOE rulemaking team purchased three nominally identical max-tech top-loading CCWs, and hired an independent test facility to determine their average efficiency rating per the DOE test procedure.[13] The test results suggest that the max-tech CCW achieves a 1.63 MEF/8.4 WF efficiency rating instead of 1.76 MEF/8.3 WF as stated. Even at this lower max-tech level, the unit identified as the max-tech top-loading CCW model for the October 2008 NOPR continues to be the max-

[13] A minimum of three washers are required to be tested per the DOE test procedure (10 CFR 430 subpart B, appendix J1) to give test results some statistical certainty. If variability in the test results for the three washers is too high, an additional three units must be tested. For the DOE testing, no additional test units were required because the initial results had sufficiently low variability to be statistically valid.

tech top-loading CCW for the SNOPR analyses. However, as the tested values do not agree with the MEF and WF ratings in the CEC database on which the October 2008 NOPR analyses were based, and because this model was the only top-loading CCW stated to meet the (1.76 MEF/8.3 WF) max-tech level defined in the October 2008 NOPR, DOE elected to eliminate that efficiency level from the top-loading CCW analysis in the SNOPR.

Accordingly, DOE is proposing (1.60 MEF/8.5 WF) for today's max-tech level. Originally included based upon the CEE's Tier 2 qualifying criteria for CCWs effective between January 1, 2004, and January 1, 2007, 1.6 MEF/8.5 WF is an efficiency level for which DOE had previously solicited feedback from interested parties and which is also very close to the tested results for the max-tech CCW. The max-tech model uses many standard top-loader components and materials; hence, DOE research suggests that no CCW manufacturer would suffer material harm since they all should be able to produce top-loading machines that meet the max-tech efficiency level without technical difficulty.

ASAP stated that DOE should review current and upcoming ENERGY STAR efficiency levels for RCWs and subsequently revise efficiency levels under consideration for CCWs. ASAP noted that there are vertical-axis RCWs with agitators on the market that exceed the max-tech CCW level (*i.e.,* that impeller-type clothes washers are not necessary to exceed the current max-tech CCW efficiency level as implied by some manufacturers). (ASAP, Public Meeting Transcript, No. 40.5 at pp. 202–203) DOE is aware of the clothes washers referenced by ASAP and notes that they are only sold into the RCW market. Thus, it is not possible to assess whether these washers would be able to stand up to the rigors of operating in the CCW market. DOE research suggests that these washers are heavily patented, possibly preventing competitors such as the LVM from developing similar appliances. DOE research also suggests that some of the means by which these washers achieve their high efficiency levels (such as adaptive fill, a high number of wash programs, *etc.*) would yield few savings in a CCW setting, where washers are typically only washed with full loads and a limited number of wash programs are desired to limit consumer education needs. For these reasons, DOE did not consider these clothes washers in determining revised efficiency levels for the CCW analysis.

Thus, for today's SNOPR, DOE has proposed revised top-loading CCW efficiency levels shown in Table III.2, in which the max-tech top-loading level is now efficiency level 2 (1.60 MEF/8.5 WF). No changes have been made to the efficiency levels proposed in the October 2008 NOPR for front-loading CCWs in today's supplemental notice.

TABLE III.2—COMMERCIAL CLOTHES WASHER EFFICIENCY LEVELS PROPOSED FOR THIS SNOPR

Efficiency level	Modified energy factor (ft^3/kWh)/ water factor (gal/ft^3)	
	Top-loading	Front-loading
Baseline	1.26/9.5	1.72/8.0
1	1.42/9.5	1.80/7.5
2	1.60/8.5	2.00/5.5
3	N/A	2.20/5.1
4	N/A	2.35/4.4

DOE seeks comment on the revised efficiency levels for top-loading CCWs. This is identified as Issue 2 in section VII.E of today's supplemental notice (Issues on Which DOE Seeks Comment).

b. Technological Feasibility of the Revised Top-Loading Max-Tech Level

DOE also received numerous comments regarding the viability in commercial settings of the max-tech top-loading CCW evaluated in the October 2008 NOPR. Alliance and GE commented that the commercial acceptance of the technology behind the max-tech vertical-axis CCW is as yet unknown because the GE model was introduced only recently and because the max-tech unit is currently only sold into the on-premise laundry market segment, where the frequency of user abuse such as overloading is lower than in other commercial segments (laundromats, multi-family housing, *etc.*). (Alliance, Public Meeting Transcript, No. 40.5 at p. 23; GE, Public Meeting Transcript, No. 40.5 at pp. 173–174; GE, No. 48 at p.4;) Whirlpool suggested that the practice of overloading impairs top-loading CCWs more than front-loading machines, and, thus, inherently limits the efficiency levels that top-loading CCWs can achieve. Whirlpool also stated that CCWs are more prone to user abuse, such as extreme overloading, than RCWs. Whirlpool noted that certain residential platforms are not able to achieve proper clothes roll-over and, hence, cleaning when overfilled. (Whirlpool, No. 50 at pp. 2–3) The Joint Comment stated that on-premise laundry is served primarily by larger capacity equipment than is covered by this rulemaking. (Joint Comment, No. 44 at pp. 4–5) Conversely, Alliance stated that the max-tech vertical-axis CCW is based on a lightweight RCW platform that is poorly suited to commercial usage. (Alliance, No. 45 at Attachment 2, p. 7)

DOE recognizes that the max-tech top-loading CCW is currently marketed only to on-premise laundry facilities and is not yet offered with a coin-box or smart card reader option for laundromat or multi-housing laundry use. DOE research indicates that the max-tech CCW is based on a standard vertical-axis RCW platform (*i.e.,* one with an agitator) with selective upgrades, including spray rinse, four water-level settings, additional low-temperature wash programs, a low-standby power supply, and an electronic control board/user interface/drive system that is customized for its intended use. No proprietary technologies were observed, and, thus, DOE believes that all CCW manufacturers could market vertical-axis clothes washers with similar performance in time for the effective date of today's proposed rule. The unit shares many characteristics with CCWs from the same manufacturer marketed towards laundromat and multi-unit housing applications, including an industry-standard 25-minute wash cycle. In its teardown analysis, DOE observed that the max-tech top-loading CCW appears to be built with similar construction and components as similar CCW models marketed to commercial laundromats, which are also largely based on an existing RCW platform. Thus, DOE believes that the max-tech CCW is equally rugged and durable as

other units on the market. Further, DOE believes that applicable payment-system interfaces could be incorporated in time for the effective date of today's proposed standards.

DOE research also suggests that commercial acceptance depends on wash performance. Multiple comments from interested parties were received concerning wash performance of high-efficiency clothes washers. The Multi-Housing Laundry Association (MLA) and Alliance commented that the top-loading CCW standard proposed in the October 2008 NOPR could result in reduced equipment quality and clothes washing and rinsing performance. Alliance stated that the required reductions in water consumption and and/or low wash temperature to meet the standard proposed in the October 2008 NOPR would negatively affect consumer utility. Alliance stated that the max-tech vertical-axis CCW, when used with common clothes washing detergents, may not provide adequate clothes washing performance. (Alliance, Public Meeting Transcript, No. 40.5 at pp. 23–24 and p. 202; Alliance No. 45 at p. 1 and Attachment 2, p. 14; MLA No. 49 at pp. 3–4) DOE recognizes that any amended energy efficiency standard could result in a lessening of certain equipment utility and hence interviews interested parties to better understand the potential impacts of energy efficiency strategies that manufacturers might employ in their equipment. Although interested parties have suggested that the max-tech model does not provide acceptable washing and rinsing performance targets, especially when overloaded, they have yet to submit evidence of such performance degradation. Furthermore, DOE is not aware of any widely accepted, quantitative measures associated with clothes washing performance. While DOE research uncovered a rinse-performance standard that was developed by Australian clothes washer manufacturers, this rinse test has yet to find acceptance in the U.S. market.

DOE also received comments on whether the max-tech vertical-axis efficiency level could be achieved by multiple CCW models. Alliance stated that it would be unwise to set a standard close to the max-tech level, since it could eliminate all but the max-tech model from the market. (Alliance, No. 45 at Attachment 2, p. 13) Alliance believes a properly functioning top-loading CCW market requires a range of models to serve all users. (Alliance, No. 45 at Attachment 2, p. 13) DOE notes that the MEF/WF combination for vertical-axis CCWs proposed in the October 2008 NOPR as TSL 2 and currently proposed in today's SNOPR as the max-tech level is not based on either the stated or the tested max-tech vertical-axis unit. Rather, the combination of MEF and WF proposed is set at a level slightly below the measured max-tech values, and is a level for which DOE had previously collected manufacturing, capital expenditure, product development, and other costs. For today's supplemental notice, DOE revised the max-tech level to the values at TSL 2 proposed in the October 2008 NOPR—1.60 MEF/8.5 WF—based on its independent testing. Compared to the top-loading max-tech level and proposed standard of 1.76 MEF/8.3 WF published in the October 2008 NOPR, the revised level is slightly less stringent (see section III.C.1 for a complete discussion of this change) and may allow manufacturers to field units with higher tested efficiencies in the future. For example, the max-tech unit may be revised to achieve its stated efficiency level. DOE believes that this revision of the proposed max-tech level for today's SNOPR should help alleviate some manufacturers' concerns regarding the technological feasibility and commercial acceptance of a max-tech top-loading CCW.

Alliance commented that front-loading CCWs with electric heaters have an MEF of 1.96, which would not meet the front-loading standards proposed in the October 2008 NOPR. According to Alliance, customers in some parts of the northern United States need such heaters to supplement their hot water supply in order to maintain proper wash temperatures despite very cold water supply temperatures. (Alliance, Public Meeting Transcript, No. 40.5 at p. 22) DOE has received no data on the extent or size of this impact or of the affected population. Hence, DOE invites comment, including population and efficiency impact data, to describe this issue.

DOE also invites further comment and information on the technological feasibility of the proposed max-tech CCW, including washing and rinsing performance measures for CCWs and population data for water heating CCWs. This is identified as Issue 3 in section VII.E of today's supplemental notice (Issues on Which DOE Seeks Comment).

2. Manufacturing Costs

In the October 2008 NOPR, DOE presented manufacturing cost estimates based on the November 2007 ANOPR analysis, revised in response to detailed CCW manufacturer feedback obtained at the NOPR stage for equipment at each efficiency level. 73 FR 62034, 62055–62056 (Oct. 17, 2008). These manufacturing costs were the basis of inputs for a number of other analyses in this rulemaking, including the LCC, national impact, and GRIM analyses.

As described in the October 2008 NOPR, DOE found that a low-volume manufacturer (LVM) operates in both the residential and CCW markets. DOE considers this manufacturer to be low-volume because its annual shipments in the combined RCW and CCW market are significantly lower than those of its larger competitors. However, unlike its larger rivals, most of the LVM's unit shipments are in the CCW market, where the LVM has significant market share. Also unlike its diversified competitors, this company exclusively manufactures laundry equipment. A review of the Securities and Exchange Commission (SEC) 10–K documents filed by the LVM revealed that, as of 2005, this company derived 22 percent of its total revenue from the sale of front- and top-loading clothes washers and 87 percent of that income was from the commercial market.[14] As a result, the LVM could be affected disproportionately by any rulemaking concerning CCWs compared to its competitors, for whom CCWs represent less than 2 percent of total clothes washer sales. Alliance stated that it is the LVM and that it has neither the purchasing power nor the funding to support wide-ranging research and development programs like those of its larger, more diverse rivals. (Alliance, No. 45 at Attachment 2, p. 8) As a result, the manufacturing costs for Alliance are inherently higher compared to those of its rivals. Alliance believes that the cost of compliance with the top-loading CCW standard proposed in the October 2008 NOPR would be especially high if Alliance were required to introduce non-traditional agitator designs to meet it. (Alliance, Public Meeting Transcript, No. 40.5 at p. 23 and p. 202) DOE research suggests that this efficiency level for vertical-axis clothes washers can be met with conventional, non-proprietary technology that is on the market today. Since the October 17, 2008 NOPR meeting, DOE has received no further comments on the manufacturing cost curves. Thus, for today's SNOPR, DOE has retained all cost estimates presented in the October 2008 NOPR at the retained efficiency levels, though each value was scaled by the Producer Price Index (PPI) multiplier for the commercial laundry equipment industry (NAICS 333312)

[14] SEC documents pertaining to the LVM are available online at: *http://sec.gov/cgi-bin/browse-idea?action=getcompany&CIK=0001063697&owner=exclude&count=40.*

between 2007 and 2008 to update the costs in the October 2008 NOPR to 2008$.[15] These are shown in Table III.3.

TABLE III.3—COMMERCIAL CLOTHES WASHER INCREMENTAL MANUFACTURING COSTS

Efficiency level	Modified energy factor (ft³/kWh)/water factor (gal/ft³)		Incremental cost	
	Top-loading	Front-loading	Top-loading	Front-loading
Baseline	1.26/9.5	1.72/8.0	$0.00	$0.00
1	1.42/9.5	1.80/7.5	77.60	0.00
2	1.60/8.5	2.00/5.5	134.99	14.21
3	N/A	2.20/5.1	N/A	39.34
4	N/A	2.35/4.4	N/A	66.16

D. Life-Cycle Cost and Payback Period Analysis

In response to the requirements of section 325(o)(2)(B)(i) of the Act, DOE conducted LCC and PBP analyses to evaluate the economic impacts of possible amended energy conservation standards for owners of CCWs. This section of the notice describes these analyses. DOE conducted the analysis using a spreadsheet model developed in Microsoft (MS) Excel for Windows 2007. (See the SNOPR TSD, chapter 8).

The LCC is the total consumer expense over the life of the equipment, including purchase and installation expense and operating costs (energy and water expenditures, repair costs, and maintenance costs). The PBP is the number of years it would take for the consumer to recover the increased costs of a higher-efficiency equipment through energy savings. To calculate the LCC, DOE discounted future operating costs to the time of purchase and summed them over the lifetime of the equipment. DOE measured the change in LCC and the change in PBP associated with a given efficiency level relative to a base case forecast of equipment efficiency. The base case forecast reflects the market in the absence of amended mandatory energy conservation standards. As part of the LCC and PBP analyses, DOE developed data that it used to establish equipment prices, installation costs, annual energy consumption, energy and water prices, maintenance and repair costs, equipment lifetime, and discount rates.

DOE was unable to develop a consumer sample for CCWs because EIA's *Commercial Building Energy Consumption Survey* (CBECS) does not provide the necessary data to develop one.[16] Instead, DOE established the variability and uncertainty in energy and water use by defining the uncertainty and variability in the use (cycles per day) of the equipment. The variability in energy and water pricing was characterized by regional differences in energy and water prices. DOE calculated the LCC associated with a baseline CCW. To calculate the LCC savings and PBP associated with equipment meeting higher efficiency standards, DOE substituted the baseline unit with a more efficient design.

Table III.4 summarizes the approaches and data DOE used to derive the inputs to the LCC and PBP calculations for the October 2008 NOPR, and the changes it made for today's SNOPR. DOE did not introduce changes to the LCC and PBP analyses methodology described in the October 2008 NOPR. However, as the following sections discuss in more detail, DOE revised some of the inputs to the analysis. Chapter 8 of the TSD accompanying this notice contains detailed discussion of the methodology utilized for the LCC and PBP analyses as well as the inputs developed for the analyses.

TABLE III.4—SUMMARY OF INPUTS AND KEY ASSUMPTIONS IN THE LCC AND PBP ANALYSES

Inputs	October 2008 NOPR	Changes for the SNOPR
Affecting Installed Costs:		
Equipment Price	Derived by multiplying manufacturer cost by manufacturer, distributor markups and sales tax.	Updated prices from 2006$ to 2008$.
Installation Cost	Baseline cost updated with RS Means *Mechanical Cost Data,* 2008.	Updated costs from 2006$ to 2008$.
Affecting Operating Costs:		
Annual Energy and Water Use.	Per-cycle energy and water use based on MEF and WF levels. Disaggregated into per-cycle machine, dryer, and water heating energy using data from DOE's 2000 TSD for residential clothes washers. Annual energy and water use determined from the annual usage (number of use cycles). Usage based on several studies including research sponsored by MLA[17] and the Coin Laundry Association[18] (CLA). Different use cycles determined for multi-family and laundromat equipment applications.	No change.

[15] PPI data is maintained by the Bureau of Labor Statistics and is available at http://*www.bls.gov/ppi/*.

[16] Available online at: *http://www.eia.doe.gov/emeu/cbecs/*.

TABLE III.4—SUMMARY OF INPUTS AND KEY ASSUMPTIONS IN THE LCC AND PBP ANALYSES—Continued

Inputs	October 2008 NOPR	Changes for the SNOPR
Energy and Water/ Wastewater Prices.	Electricity: Updated using EIA's 2006 Form 861 data .... Natural Gas: Updated using EIA's 2006 *Natural Gas Monthly*. Water/Wastewater: Updated using RFC/AWWA's 2006 *Water and Wastewater Survey*. Variability: Regional energy prices determined for 13 regions; regional water/wastewater price determined for four regions.	Electricity: Updated using EIA's 2007 Form 861 data. Natural Gas: Updated using EIA's 2007 *Natural Gas Monthly*. Water/Wastewater: No change. Variability: No change.
Energy and Water/ Wastewater Price Trends.	Energy: Forecasts updated with EIA's *AEO 2008* ..... Water/Wastewater: Linear extrapolation of 1970–2007 historical trends in national water price index.	Reference Case forecast updated with EIA's *AEO 2009* April Release. High-Growth and Low-Growth forecasts updated with EIA's *AEO 2009* March Release. Water/Wastewater Prices: Updated to include historical trend through 2008. For the four years after 2008, fixed the annual price to the value in 2008 to prevent a dip in the forecasted prices.
Repair and Maintenance Costs.	Estimated annualized repair costs for each efficiency level based on half the equipment lifetime divided by the equipment lifetime.	Updated costs from 2006$ to 2008$.
Affecting Present Value of Annual Operating Cost Savings		
Equipment Lifetime	Based on data from various sources including the CLA. Different lifetimes established for multi-family and laundromat equipment applications. Variability and uncertainty characterized with Weibull probability distributions.	No change.
Discount Rates	Approach based on cost of capital of publicly traded firms in the sectors that purchase CCWs. Primary data source is Damodaran Online[19].	No change.
Affecting Installed and Operating Costs:		
Effective Date of New Standard.	2012	2013.
Base-Case Efficiency Distributions.	Analyzed as two equipment classes: top-loading and front-loading. Distributions for both classes based on the number of available models at the efficiency levels. Top-Loading: 63.6% at 1.26 MEF/9.5 WF; 33.3% at 1.42 MEF/9.5 WF; 0% at 1.60 MEF/8.5 WF; 3.0% at 1.76 MEF/8.3 WF. Front-Loading: 7.4% at 1.72 MEF/8.0 WF; 4.4% at 1.80 MEF/7.5 WF; 85.3% at 2.00 MEF/5.5 WF; 1.5% at 2.20 MEF/5.1 WF; 1.5% at 2.35 MEF/4.4 WF.	Updated to reflect the most recent distributions on the number of available models at the efficiency levels. Top-Loading: 64.8% at 1.26 MEF/9.5 WF; 33.8% at 1.42 MEF/9.5 WF; 1.4% at 1.60 MEF/8.5 WF; 1.76 MEF/8.3 WF removed as Max Tech. Front-Loading: 3.5% at 1.72 MEF/8.0 WF; 0.0% at 1.80 MEF/7.5 WF; 73.7% at 2.00 MEF/5.5 WF; 22.8% at 2.20 MEF/5.1 WF; 0.0% at 2.35 MEF/4.4 WF.

1. Equipment Prices

To calculate the equipment prices faced by CCW purchasers, DOE multiplied the manufacturing costs developed from the engineering analysis by the supply chain markups it developed (along with sales taxes). DOE used the same supply chain markups for today's SNOPR that were developed for the October 2008 NOPR. See chapter 7 of the TSD accompanying this notice for additional information. To calculate the final installed prices, DOE added installation cost to the equipment prices.

2. Installation Cost

Installation costs include labor, overhead, and any miscellaneous materials and parts. For the October 2008 NOPR and today's SNOPR, DOE used data from the RS Means *Mechanical Cost Data,* 2008 on labor requirements to estimate installation costs for CCWs.[20] DOE estimates that installation costs do not increase with equipment efficiency.

3. Annual Energy Consumption

DOE determined the annual energy and water consumption of CCWs by multiplying the per-cycle energy and water use by the estimated number of cycles per year. In the October 2008 NOPR, DOE concluded that the use of the existing RCW test procedure provides a representative basis for rating and estimating the per-cycle energy use of CCWs. For today's SNOPR, DOE maintained the above approach.

4. Energy and Water Prices

a. Energy Prices

DOE derived average electricity and natural gas prices for 13 geographic areas consisting of the nine U.S. Census divisions, with four large States (New York, Florida, Texas, and California) treated separately.

DOE estimated commercial electricity prices for each of the 13 geographic areas based on data from EIA Form 861, *Annual Electric Power Industry Report.*[21] DOE calculated an average commercial electricity price by first estimating an average commercial price

[17] Please see the following Web site for further information: *http://www.mla-online.com/.*

[18] Please see the following Web site for further information: *http://www.coinlaundry.org/.*

[19] Please see the following Web site for further information: *http://pages.stern.nyu.edu/~adamodar/.*

[20] Available online at: *http://www.rsmeans.com/bookstore/.*

[21] Available online at: *http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

for each utility, and then calculated a regional average price by weighting each utility with customers in a region by the number of commercial customers served in that region. The calculations for today's SNOPR used the most recent available data from 2007.

For the October 2008 NOPR, DOE estimated average commercial natural gas prices in each of the 13 geographic areas based on 2006 data from the EIA publication *Natural Gas Monthly.*[22] DOE calculated an average natural gas price for each area by first calculating the average prices for each State, and then calculating a regional price by weighting each State in a region by its population. For today's SNOPR, DOE used 2007 data from the same source.

To estimate the trends in electricity and natural gas prices for the October 2008 NOPR, DOE used the price forecasts in the *AEO 2008.*[23] To arrive at prices in future years, DOE multiplied the average prices described above by the forecast of annual average price changes in *AEO 2008.* For today's supplemental notice, DOE updated its energy price forecasts using those in the *AEO 2009* April Release. Because the *AEO* forecasts prices only to 2030, DOE followed past guidelines provided to the Federal Energy Management Program by EIA and used the average rate of change during 2020–2030 to estimate the price trends beyond 2030.

The spreadsheet tools used to conduct the LCC and PBP analysis allow users to select either the *AEO's* high-growth case or low-growth case price forecasts to estimate the sensitivity of the LCC and PBP to different energy price forecasts. The *AEO 2009* April Release provides only forecasts for the Reference Case. Therefore, for today's supplemental notice, DOE used the *AEO 2009* March Release high-growth case or low-growth forecasts to estimate high-growth and low-growth price trends.

DOE received comment regarding the inputs into the energy price forecasts. The Joint Comment recommended that DOE conduct a sensitivity analysis using a basket of other forecasts besides the *AEO.* (Joint Comment, No. 44 at p. 11) As mentioned above, DOE considered the *AEO's* high-growth case and low-growth case price forecasts to estimate the sensitivity of the LCC and PBP results to different energy price forecasts. The *AEO* alternative forecasts provide a suitable range to examine the sensitivity of LCC and PBP results to different energy price forecasts.

Interested parties also recommended DOE consider pending legislation that could influence future energy prices. The Joint Comment stated that to realistically depict energy prices in the future, DOE must consider the impact of carbon control legislation, since such legislation is very likely. It also noted that there are regional cap and trade programs that are in effect in the Northeast (Regional Greenhouse Gas Initiative (RGG)) and the West (Western Climate Initiative (WCI)) that will impact the price of electricity and are not reflected in the *AEO* energy price forecasts. (Joint Comment, No. 44 at p. 12) EJ stated that caps will likely be in place by the time new standards become effective, so DOE should increase its electricity prices to reflect the cost of complying with emission caps. (EJ, Public Meeting Transcript, No. 40.5 at pp. 105–106) The shape of Federal carbon control legislation, and the ensuing cost of carbon mitigation to electricity generators, is as yet too uncertain to incorporate into the energy price forecasts that DOE uses. The costs of carbon mitigation to electricity generators resulting from the regional programs are also very uncertain over the forecast period for this rulemaking. Even so, EIA did include the effect of the RGGI in its *AEO 2009* April Release energy price forecasts. (WCI did not provide sufficient detail to EIA in order for them to model the impact of the WCI on energy price forecasts.) Therefore, the energy price forecasts used in today's supplemental notice do include the impact of one of the two regional cap and trade programs in the United States.

b. Water and Wastewater Prices

DOE obtained commercial water and wastewater price data from the Water *and Wastewater Rate Survey* conducted by Raftelis Financial Consultants (RFC) and the American Water Works Association (AWWA). For the October 2008 NOPR and today's SNOPR, DOE used the 2006 *Water and Wastewater Rate Survey.*[24] The survey covers approximately 300 water utilities and 200 wastewater utilities, with each industry analyzed separately. DOE calculated values at the Census region level (Northeast, South, Midwest, and West). Edison Electric Institute (EEI) questioned why water and wastewater prices were not developed at the Census division level. (EEI, Public Meeting Transcript, No. 40.5, p. 103 and p. 178) The samples that DOE obtained of 200–300 utilities are not large enough to calculate regional prices for all U.S. Census divisions and large States. Hence, DOE was only able to capture the variability of water and wastewater prices at the Census region level.

To estimate the future trend for water and wastewater prices, DOE used data on the historic trend in the national water price index (U.S. city average) provided by the Bureau of Labor Statistics (BLS). For the October 2008 NOPR, DOE extrapolated a future trend based on the linear growth from 1970 to 2007. The Joint Comment stated that (1) the trend line for water and wastewater prices developed by DOE begins with an anomalous dip of over seven percent in costs for 2008, rather than the likely increase of 2 percent or more; and (2) DOE's trend forecast understates the future cost of water and wastewater service by some ten percent. (Joint Comment, No. 44 at pp. 3–4) For today's SNOPR, DOE modified its future trends of water and wastewater prices based on some of the Joint Comment's suggestions. DOE continued to the use the BLS historical data, which now provides data for the year 2008, and extrapolated the future trend based on the linear growth from 1970 to 2008. But rather than use the extrapolated trend to forecast the prices for the four years after 2008, DOE pinned the annual price to the value in 2008. Otherwise, forecasted prices for this 4-year time period would have been up to 8 percent lower than the price in 2008. Estimating prices in this manner is appropriate because it is consistent with the historical trend that demonstrates that prices do not decrease over time. Estimating prices in this manner also prevents the anomalous dip noted by the Joint Comment. Beyond the 4-year time period, DOE used the extrapolated trend to forecast prices out to the year 2043.

5. Repair and Maintenance Costs

Repair costs are associated with repairing or replacing components that have failed in the appliance, whereas maintenance costs are associated with maintaining the operation of the equipment. For the October 2008 NOPR, DOE included increased repair costs based on an algorithm developed by DOE for central air conditioners and heat pumps and which was also used for residential furnaces and boilers.[25]

[22] Available online at: *http://www.eia.doe.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm.html.*

[23] All AEO publications are available online at: *http://www.eia.doe.gov/oiaf/aeo/.*

[24] Raftelis Financial Consultants, Inc., *2006 RFC/AWWA Water and Wastewater Rate Survey, 2006,* (2006). This document is available at: *http://www.raftelis.com/ratessurvey.html.*

[25] U.S. Department of Energy, Technical Support Document: Energy Efficiency Standards for Consumer Products: Residential Central Air Conditioners and Heat Pumps (May 2002) chapter 5. This document is available at: *http://*

Continued

This algorithm calculates annualized repair costs by dividing half of the equipment retail price over the equipment lifetime. Whirlpool agreed with the assumptions DOE used to estimate CCW repair costs in the October 2008 NOPR. (Whirlpool, No. 50 at p. 3) MLA stated that more efficient CCWs incur higher maintenance costs. (MLA, No. 49 at p. 4) ASAP asked whether DOE had gathered empirical data to estimate CCW repair and maintenance costs. (ASAP, Public Meeting Transcript, No. 40.5 at pp. 110–111) DOE was unable to gather any empirical data specific to CCWs to estimate repair and maintenance cost. In the absence of better data, DOE retained its approach from the October 2008 NOPR for today's SNOPR.

6. Equipment Lifetime

For the October 2008 NOPR and today's SNOPR, DOE used a variety of sources to establish low, average, and high estimates for equipment lifetime. The average CCW lifetime was 11.3 years for multi-family applications, and 7.1 years in laundromat applications. DOE characterized CCW lifetimes with Weibull probability distributions.

7. Discount Rates

To establish discount rates for CCWs for the October 2008 NOPR and today's SNOPR, DOE estimated the cost of capital of publicly traded firms in the sectors that purchase CCWs as the weighted average of the cost of equity financing and the cost of debt financing. DOE identified the following sectors purchasing CCWs: (1) Educational services; (2) hotels; (3) real estate investment trusts; and (4) personal services. DOE estimated the weighted-average cost of capital (WACC) using the respective shares of equity and debt financing for each sector that purchases CCWs. It calculated the real WACC by adjusting the cost of capital by the expected rate of inflation. To obtain an average discount rate value, DOE used additional data on the number of CCWs in use in various sectors. DOE estimated the average discount rate for companies that purchase CCWs at 5.7 percent. DOE received comment on the discount rates from Alliance, who suggested that the discount rates used in LCC and PBP analyses should be updated to reflect current financial market conditions. (Alliance, Public Meeting Transcript, No. 40.5 at pp. 115–116) DOE used the most recent available data (from 2006) from Damodaran Online and Ibbotson Associates to estimate its discount rates for CCWs. Damodaran Online is a widely used source of information about company debt and equity financing for most types of firms. Ibbotson Associates is a leading authority on asset allocation with expertise in capital market expectations and portfolio implementation. DOE believes that the data it used are representative of conditions that may apply when the first purchases impacted by standards would be made. Therefore, DOE continued to use these sources for today's SNOPR and will determine if the data used from both sources needs to be updated for the final rule.

8. Effective Date of the Amended Standards

The compliance date is the future date when parties subject to the requirements of a new standard must begin compliance. For the October 2008 NOPR, DOE assumed that any new energy efficiency standards adopted in this rulemaking would require compliance in March 2012, 3 years after the final rule was expected to be published in the **Federal Register**. For today's SNOPR, DOE expects that the final rule will be published by January 1, 2010, as required by EPACT 2005, with compliance with new standards required by January 1, 2013. DOE calculated the LCC for the appliance consumers as if they would purchase new equipment in the year after the standard takes effect.

9. Equipment Energy Efficiency in the Base Case

For the LCC and PBP analysis, DOE analyzes higher efficiency levels relative to a baseline efficiency level. However, some consumers may already purchase equipment with efficiencies greater than the baseline equipment levels. Thus, to accurately estimate the percentage of consumers that would be affected by a particular standard level, DOE estimates the distribution of equipment efficiencies that consumers are expected to purchase under the base case (*i.e.,* the case without new energy efficiency standards). DOE refers to this distribution of equipment energy efficiencies as a base-case efficiency distribution. As discussed previously in section III.A, DOE decided to analyze CCWs with two equipment classes—top-loading CCWs and front-loading CCWs. For the October 2008 NOPR and today's SNOPR, DOE used the number of available models within each equipment class to establish the base-case efficiency distributions. Table III.5 presents the market shares of the efficiency levels in the base case for CCWs. See chapter 8 of the TSD accompanying this notice for further details on the development of CCW base-case market shares.

TABLE III.5—COMMERCIAL CLOTHES WASHERS: BASE CASE MARKET SHARES

Top-loading				Front-loading			
Standard level	MEF	WF	Market share (percent)	Standard level	MEF	WF	Market share (percent)
Baseline	1.26	9.50	64.8	Baseline	1.72	8.00	3.5
1	1.42	9.50	33.8	1	1.80	7.50	0.0
2	1.60	8.50	1.4	2	2.00	5.50	73.7
				3	2.20	5.10	22.8
				4	2.34	4.40	0.0

10. CCW Split Incentive

Under a split incentive situation, the party purchasing more efficient and presumably more expensive equipment (referred to as ''consumers'' in this notice) may not realize the operating cost savings from that equipment, because another party may pay the utility bill. For the October 2008 NOPR, DOE evaluated the ability of CCW owners to pass on the higher purchase costs of more expensive CCWs in return for lower operational costs. DOE concluded that few route operators

www.eere.energy.gov/buildings/appliance_standards/residential/ac_central_1000_r.html.

would allow themselves to be held to a lease agreement which would prevent them from recovering the cost of more efficient CCW equipment. The Joint Comment stated that contracts between route operators are multi-housing property owners are subject to revision and renewal, and that the division of coin-box revenue may be negotiated as a result of cost-effective efficiency improvements in CCWs. (Joint Comment, No. 44 at p. 6) Because DOE received only supportive comments regarding its assessment of the potential of a split incentive in the CCW market, DOE continues to conclude for today's SNOPR that new CCW efficiency standards are unlikely to lead to split incentives in the CCW market.

11. Rebound Effect

The rebound effect occurs when a piece of equipment, made more efficient and used more intensively, does not yield the expected energy savings from the efficiency improvement. In the case of more efficient clothes washers, limited research has been conducted to show that there is no rebound effect for home appliances, although the consumer may choose to purchase larger models with more features that would result in higher energy use.[26] DOE did not receive any comments from interested parties on the issue of the rebound effect for CCWs. Based on the limited research showing no rebound effect for home appliances, DOE did not include a rebound effect in its analysis of CCW standards.

12. Inputs to Payback Period Analysis

The PBP is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more efficient equipment through operating cost savings, compared to baseline equipment. The simple PBP does not account for changes in operating expense over time or the time value of money. The inputs to the PBP calculation are the total installed cost of the equipment to the customer for each efficiency level and the annual (first-year) operating expenditures for each efficiency level. For the October 2008 NOPR and today's SNOPR, the PBP calculation uses the same inputs as the LCC analysis, except that energy price trends and discount rates are not needed.

13. Rebuttable-Presumption Payback Period

As noted above, EPCA, as amended (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a)), establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and as applicable, water) savings during the first year that the consumer will receive as a result of the standard,'' as calculated under the test procedure in place for that standard. For each TSL, DOE determined the value of the first year's energy savings by calculating the quantity of those savings in accordance with DOE's test procedure, and multiplying that amount by the average energy price forecast for the year in which a new standard would be first effective—in this case, 2013.

DOE received comments addressing the topic of using a rebuttable presumption payback period to establish the economic justification of an energy conservation standard level. The Joint Comment and EJ stated that DOE's view that consideration of a full range of impacts is necessary because the rebuttable presumption payback period criterion is not sufficient for determining economic justification does not reflect the extent to which the rebuttable presumption analysis constrains DOE's authority to reject standards based on economic impacts. (Joint Comment, No. 44 at appendix B, p. 1; EJ, Public Meeting Transcript, No. 40.5 at p. 130) The Joint Comment stated that in 42 U.S.C. 6295(o)(2)(B)(iii), Congress erected a significant barrier to DOE's rejection, on the basis of economic justifiability, of standard levels to which the rebuttable presumption applies. Further, EJ and the Joint Comment stated DOE preference to proceed under the seven-factor test contained in 42 U.S.C. 6295(o)(2)(B)(i) is not pertinent.

The Joint Comment agreed with DOE that analysis under the seven-factor test is necessary and has typically supported standards with paybacks longer than 3 years. However, the Joint Comment stated that DOE's decision-making must reflect the expressed intent of Congress that the highest standard level resulting in cost recovery within 3 years constitutes the presumptive lowest standard level that DOE must adopt. (Joint Comment, No. 44 at appendix B, pp. 1–2)

DOE does consider both the rebuttable presumption payback criteria, as well as a full analysis including all seven relevant statutory criteria under 42 U.S.C. 6295(o)(2)(B)(i) when examining potential standard levels. However, DOE believes that the interested parties are misinterpreting the statutory provision in question. The Joint Comment and EJ present one possible reading of an ambiguous provision (*i.e.,* that DOE need not look beyond the results of the rebuttable presumption inquiry), but DOE believes that such an approach is neither required nor appropriate, because it would ask the agency to potentially ignore other relevant information that would bear on the selection of the most stringent standard level that meets all applicable statutory criteria. The interested parties' interpretation would essentially restrict DOE from being able to rebut the findings of the preliminary presumptive analysis.

The statute contains no such restriction, and such an approach would hinder DOE's efforts to base its regulations on the best available information. Similarly, DOE believes that the Joint Comment misreads the statute in calling for a level that meets the rebuttable presumption test to serve as a minimum level when setting the final energy conservation standard. To do so would not only eliminate the ''rebuttable'' aspect of the presumption but would also lock in place a level that may not be economically justified based upon the full review of statutory criteria. DOE is already obligated under EPCA to select the most stringent standard level that meets the applicable statutory criteria, so there is no need to tie the same requirement to the rebuttable presumption.

E. National Impact Analysis—National Energy Savings and Net Present Value Analysis

1. General

DOE's NIA assesses the national energy savings, as well as the national NPV of total consumer costs and savings, expected to result from new standards at specific efficiency levels. DOE applied the NIA spreadsheet to perform calculations of energy savings and NPV, using the annual energy consumption and total installed cost data from the LCC analysis. DOE forecasted the energy savings, energy cost savings, equipment costs, and NPV for each equipment class from 2013 to 2043. The forecasts provide annual and cumulative values for all four parameters. In addition, DOE incorporated into its NIA spreadsheet the capability to analyze sensitivity of the results to forecasted energy prices

[26] L.A. Greening, D.L. Greene, and C. Difiglio. ''Energy efficiency and consumption—the rebound effect—a survey.'' *Energy Policy* 28 (2000) 389–401. Available for purchase at *http://www.elsevier.com/locate/enpol.*

and equipment efficiency trends. Table III.6 summarizes the approach and data DOE used to derive the inputs to the NES and NPV analyses for the October 2008 NOPR and the changes made in the analyses for today's SNOPR. A discussion of the inputs and the changes follows below. (See chapter 11 of the SNOPR TSD for further details.)

TABLE III.6—APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE NATIONAL ENERGY SAVINGS AND NPV ANALYSES

Inputs	2008 NOPR description	Changes for the SNOPR
Shipments	Annual shipments from Shipments Model	See Table III.7.
Effective Date of Standard	2012	2013.
Base-Case Forecasted Efficiencies.	Shipment-weighted efficiency (SWEF) determined in the year 2005. SWEF held constant over forecast period.	No change.
Standards-Case Forecasted Efficiencies.	Analyzed as two equipment classes. For each equipment class, roll-up scenario used for determining SWEF in the year that standards become effective for each standards case. SWEF held constant over forecast period.	No change.
Annual Energy Consumption per Unit.	Annual weighted-average values as a function of SWEF.	No change.
Total Installed Cost per Unit	Annual weighted-average values as a function of SWEF.	Updated costs from 2006$ to 2008$.
Energy and Water Cost per Unit.	Annual weighted-average values a function of the annual energy consumption per unit and energy (and water) prices.	Updated costs from 2006$ to 2008$.
Repair Cost and Maintenance Cost per Unit.	Incorporated changes in repair costs as a function of efficiency.	Updated costs from 2006$ to 2008$.
Escalation of Energy and Water/Wastewater Prices.	Energy Prices: *AEO 2008* forecasts (to 2030) extrapolation to 2042. Water/Wastewater Prices: Linear extrapolation of 1970–2007 historical trends in national water price index.	Energy Prices: Updated to *AEO 2009* April Release forecasts for the Reference Case. *AEO 2009* April Release does not provide High-Growth and Low-Growth forecasts; used *AEO 2009* March Release High-Growth and Low-Growth forecasts to estimate high and low growth price trends. Water/Wastewater Prices: Updated to include historical trend through 2008. For the four years following 2013 fixed the annual price to the value in 2008 to prevent a dip in the forecasted prices.
Energy Site-to-Source Conversion.	Conversion varies yearly and is generated by DOE/EIA's NEMS program (a time-series conversion factor; includes electric generation, transmission, and distribution losses).	No change.
Effect of Standards on Energy Prices.	Determined but found not to be significant	No change.
Discount Rate	Three and seven percent real	No change.
Present Year	Future expenses discounted to year 2007	Future expenses discounted to year 2009.

2. Shipments

The shipments portion of the NIA Spreadsheet is a Shipments Model that uses historical data as a basis for projecting future shipments of the equipment that are the subject of this rulemaking. In projecting CCW shipments, DOE accounted for three market segments: (1) New construction; (2) existing buildings (*i.e.,* replacing failed equipment); and (3) retired units not replaced. DOE used the non-replacement market segment to calibrate the Shipments Model to historical shipments data. For purposes of estimating the impacts of prospective standards on equipment shipments (*i.e.,* forecasting standards-case shipments) DOE considered the combined effects of changes in purchase price, annual operating cost, and household income on the magnitude of shipments.

Table III.7 summarizes the approach and data DOE used to derive the inputs to the shipments analysis for the October 2008 NOPR, and the changes it made for today's SNOPR. The general approach for forecasting CCW shipments for today's SNOPR remains unchanged from the October 2008 NOPR. That is, all CCW shipments (for both equipment classes) were estimated for the new construction, replacement and non-replacement markets. DOE then allocated shipments to each of the two equipment classes based on the market share of each class. Based on data provided by AHAM for the November 2007 ANOPR, DOE estimated that top-loading washers comprise 80 percent of the market while front-loading washers comprise 20 percent. DOE estimated that the equipment class market shares would remain unchanged over the time period 2005–2042. A discussion of the inputs and the changes follows below.

The Joint Comment suggested that DOE update its equipment class market shares to reflect the impacts of the 2006 Federal tax incentives for CCWs. (Joint Comment, No. 44 at p. 5) The Joint Comment noted that the increased production of front-loading washers in the base-case would in turn lead to lower conversion costs for manufacturers and, therefore, make it less costly to meet higher CCW efficiency standards. For today's supplemental notice, DOE reviewed the SEC 10K report of the LVM of CCWs and determined that manufacturer tax credits in recent Federal legislation have resulted in significantly increased sales of the front-loading washers for the LVM. When accounting for the LVM's market share, the increase in front-loading sales results in a current market share of 30 percent for front-loading washers. Although tax credits are set to expire after 2010, DOE believes that the

tax credits are impacting production costs and manufacturing infrastructure such that front-loading washers would continue to comprise 30 percent of the market over the entire forecast period.

Table III.7 below shows the inputs chosen for the Shipments Analysis in today's supplemental notice.

TABLE III.7 APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE SHIPMENTS ANALYSIS

Inputs	October 2008 NOPR description	Changes for the SNOPR
Number of Equipment Classes.	Two equipment classes: top-loading washers and front-loading washers. Shipments forecasts established for all CCWs and then disaggregated into the two equipment classes based on the market share of top- and front-loading washers. Market share data provided by AHAM; 80% top-loading and 20% frontloading. Equipment class market shares held constant over forecast period.	Updated, market share data based on SEC 10K report of the LVM and tax credits claimed by the LVM for producing high-efficiency CCWs. Market share determined to be: 70% top-loading and 30% front-loading. Equipment class market shares held constant over forecast period.
New Construction Shipments	Determined by multiplying multi-housing forecasts by forecasted saturation of CCWs for new multi-housing. Multi-housing forecasts with *AEO 2008* projections. Verified frozen saturations with data from the U.S. Census Bureau's *American Housing Survey* (AHS) for 1997–2005.	No change in approach. Housing forecasts updated with EIA *AEO 2009* April Release forecasts for the Reference Case. *AEO 2009* March Release forecasts used for the High-Growth Case and Low-Growth Case.
Replacements	Determined by tracking total equipment stock by vintage and establishing the failure of the stock using retirement functions from the LCC and PBP analysis. Retirement functions revised to be based on Weibull lifetime distributions.	No change.
Retired Units not Replaced (*i.e.,* non-replacements).	Used to calibrate Shipments Model to historical shipments data. Froze the percentage of non-replacements at 15 percent for the period 2007–2042 to account for the increased saturation rate of in-unit washers in the multi-family stock between 1997 and 2005 timeframe shown by the AHS.	Extended the time period out to 2043 to reflect an updated date of 2013 for when the standard becomes effective.
Historical Shipments	Data sources include AHAM data submittal, *Appliance Magazine,* and U.S. Bureau of Economic Analysis' quantity index data for commercial laundry.	No change.
Purchase Price, Operating Cost, and Household Income Impacts due to efficiency standards.	Developed the ''relative price'' elasticity which accounts for the purchase price and the present value of operating cost savings divided by household income. Used purchase price and efficiency data specific to residential refrigerators, clothes washers, and dishwashers between 1980 and 2002 to determine a ''relative price'' elasticity of demand, of −0.34.	No change.
Fuel Switching	Not applicable	No change.

DOE based its Shipments Model on the following three assumptions: (1) All equipment shipments for new construction are driven by the new multi-family housing market, (2) the relative market shares of the two equipment applications, laundromats and common-area laundry facilities in multi-family housing, are constant over time at 15 and 85 percent, respectively, and (3) the U.S. Census Bureau's quantity index data can be used to validate the shipments trend observed in the historical data. The Joint Comment stated that DOE's assumed 85 percent to 15 percent split between sales for multi-family applications and sales for laundromat applications is not based on robust or current data. (Joint Comment, No. 44 at p. 5) It cited information from Alliance Laundry that suggests that the ratio of multi-family to laundromat shipments is about 36 percent to 64 percent. DOE based its market information on a report from the CEE,[27] which gathered information from several sources. Therefore, DOE concluded that this source is more reliable than information from a single manufacturer, and it continued to apply the same multi-family/laundromat sales split used in the October 2008 NOPR for today's SNOPR.

DOE received comments regarding the impacts of impending amended energy conservation standards for CCWs on unit sales. Alliance suggested that impacts to the CCW market would encourage customers to stock up on less efficient top-loading CCWs before the implementation date, and keep older machines in operation longer. These effects would undermine the effectiveness of the standards proposed in the October 2008 NOPR. (Alliance, No. 45 at Attachment 2, p. 10) As discussed below in section III.E.2.c, DOE's shipments model uses a ''relative'' purchase price elasticity to determine the drop in shipments as a function of increased purchase price and operating cost savings. The model does forecast a drop in new shipments due to a high standard on top-loading CCWs, which is expected to result in purchase of used CCWs. DOE did not have sufficient information to account for possible stocking up on less efficient top-loading CCWs before the implementation date.

a. New Construction Shipments

To determine new construction shipments, DOE used a forecast of new housing coupled with equipment market saturation data for new housing. For new housing completions and mobile home placements, DOE adopted the projections from EIA's *AEO 2008* through 2030 for the October 2008 NOPR. For today's SNOPR, DOE used the projections from EIA's *AEO 2009*

[27] Consortium for Energy Efficiency, *Commercial Family-Sized Washers: An Initiative Description of the Consortium for Energy Efficiency* (1998). This document is available at: *http://www.cee1.org/com/cwsh/cwsh-main.php3.*

April Release Reference Case. For CCWs, DOE relied on new construction market saturation data from the above-mentioned CEE report.

b. Replacements and Non-Replacements

DOE estimated replacements using equipment retirement functions developed from equipment lifetimes. For the October 2008 NOPR and today's SNOPR, DOE used retirement functions based on Weibull distributions. For the October 2008 NOPR, DOE determined that the growth of in-unit washer saturations in the multi-family stock over the last 10 years was likely caused by conversions of rental property to condominiums, resulting in the gradual phase-out or non-replacement of failed CCWs in common-area laundry facilities. As a result, DOE used the average percent of non-replacements over the period between 1999 and 2005 (18 percent) and maintained it over the entire forecast period (2006 to 2042 for the October 2008 NOPR and 2007 to 2043 for today's SNOPR). The effect of maintaining non-replacements at 18 percent results in forecasted CCW shipments staying relatively flat during the forecast period.

Multiple interested parties commented on the shipment forecasts used by DOE in the October 2008 NOPR. Alliance agreed with the relatively flat shipment forecast. (Alliance, Public Meeting Transcript, No. 40.5 at p. 22; Alliance, No. 45 at p. 1) AHAM and Whirlpool stated that the October 2008 NOPR estimates of future shipments for CCWs were much more realistic than those used in the November 2007 ANOPR. (AHAM, Public Meeting Transcript, No. 40.5 at p. 27; AHAM, No. 47 at p. 4; Whirlpool, Public Meeting Transcript, No 40.5 at p. 28; Whirlpool, No. 50 at p. 3) The Joint Comment questioned DOE's forecast of reduced shipments for new and replacement CCWs, citing Alliance's SEC filing which projected ''modest growth'' in the installed base of commercial laundry equipment, estimated by Alliance to have grown at 0.9 percent annually since 1997. (Joint Comment, No. 44 at p. 5) DOE believes that the information it used to forecast CCW shipments for the October 2008 NOPR is more reliable than the limited information provided by the Joint Comment on one manufacturer's statement in a single SEC filing; thus DOE maintained the approach used in the October 2008 NOPR for today's SNOPR.

c. Purchase Price, Operating Cost, and Income Impacts

To estimate the combined effects on CCW shipments from increases in equipment purchase price and decreases in equipment operating costs due to amended efficiency standards, DOE conducted a literature review and a statistical analysis on a limited set of appliance price, efficiency, and shipments data for the October 2008 NOPR. DOE used purchase price and efficiency data specific to residential refrigerators, clothes washers, and dishwashers between 1980 and 2002 to conduct regression analyses. DOE's analysis suggests that the ''relative'' short-run price elasticity of demand, averaged over the three appliances, is −0.34. Because DOE's forecast of shipments and national impacts due to standards spans over 30 years, DOE also considered how the relative price elasticity is affected once a new standard takes effect. Past analyses of consumer purchase decisions for automobiles suggest that after the initial purchase price change, price elasticity becomes more inelastic over the years until it reaches a terminal value. See appendix 10A of the SNOPR TSD for more details on the development of the short-run price elasticity of demand and the long-run effects on the elasticity.

For the October 2008 NOPR, DOE incorporated a relative price elasticity change that resulted in a terminal value of approximately one-third of the short-run elasticity. In other words, DOE estimated that consumer purchase decisions, in time, become less sensitive to the initial change in the equipment's relative price. MLA commented that if the standards result in a substantial increase in the use of front-loading CCWs and a reduction or elimination in that of top-loading CCWs, consumers would see resulting price increases driven by higher purchase price and higher maintenance, service, and operating cost for front-loading CCWs compared to top-loaders. (MLA, No. 49 at pp. 3–4) In addition, ASAP questioned DOE's conclusion that standards more aggressive than the ones proposed in the October 2008 NOPR for front-loading CCWs could lead to significant recapture of the CCW market by top-loading machines. (ASAP, Public Meeting Transcript, No. 40.5 at pp. 34–35 and pp. 160–161) For its October 2008 NOPR as well as today's SNOPR, DOE estimated that price increases would lead to reductions in unit shipments for both top-loading and front-loading CCWs. DOE analyzed the impacts of increased purchase prices for each equipment class independently of the other. DOE was not able to estimate the cross price elasticity of demand between the two equipment classes to determine whether consumers would switch from one type of CCW to the other. But because the price impacts for more efficient top-loaders are higher than those for more efficient front-loaders, DOE estimated that top-loading CCW sales would decrease more rapidly than for front-loaders. As a result, DOE estimated that front-loading CCWs would gain an additional market share of only about 2 percent. In addition, DOE estimated that those consumers forgoing the purchase of new top-loading CCWs would instead purchase used top-loading CCWs with efficiencies equal to baseline top-loader levels. DOE received no additional comments on its analysis to estimate the combined effects of increases in equipment purchase price and decreases in operating costs on CCW shipments and, therefore, retained the approach for today's SNOPR.

Although DOE retained its approach from the October 2008 NOPR to estimate the impacts from changes in purchase price and operating cost, DOE has concerns over specific aspects of its analysis. First, because purchase price and efficiency data for residential appliances were used to develop the ''relative'' short-run price elasticity of demand, DOE is uncertain how applicable the price elasticity is to the commercial clothes washing market. Second, because estimates of the long-run price elasticity of demand were derived from consumer automobile purchase decisions, DOE is uncertain whether it can be inferred that the initial CCW price elasticity of demand would become more inelastic over time. Third, although a cross price elasticity of demand between top-loading and front-loading CCWs could not be developed due to the lack of specific data, DOE still has concern over the price interactions between the two types of CCWs, especially under those circumstances where the purchase price increase for one CCW equipment class is more significant than for the other. Finally, DOE is concerned over its assumption that consumers forgoing a top-loader CCW purchase due to a price increase caused by standards would instead acquire used top-loading washers. For example, those consumers forgoing a top-loading CCW purchase may instead purchase a new front-loading CCW. To understand the interactions between the used CCW market and the new front-loading CCW market, the development of a cross price

elasticity between these two markets would be ideal.

Due to the lack of data and information to develop both short- and long-run price elasticities of demand specific to CCWs as well as cross price elasticities between top-loading and front-loading CCWs and used and front-loading CCWs, DOE is seeking input and any data from interested parties that may assist in the development of price elasiticies specific to any or all of the items discussed above. This is identified as Issue 4 in section VII.E of today's supplemental notice (Issues on Which DOE Seeks Comment).

3. Other Inputs

a. Base-Case Forecasted Efficiencies

A key input to the calculations of NES and NPV are the energy efficiencies that DOE forecasts for the base case (without new standards). The forecasted efficiencies represent the annual shipment-weighted energy efficiency (SWEF) of the equipment under consideration over the forecast period (*i.e.,* from the estimated effective date of a new standard to 30 years after that date).

For the October 2008 NOPR, DOE first determined the distribution of equipment efficiencies currently in the marketplace to develop a SWEF for each equipment class for 2005. Using the SWEF as a starting point, DOE developed base-case efficiencies based on estimates of future efficiency increase. From 2005 to 2013 (2013 being the estimated effective date of a new standard), DOE estimated that there would be no change in the SWEF (*i.e.,* no change in the distribution of equipment efficiencies). Because there are no historical data to indicate how equipment efficiencies have changed over time, DOE estimated that forecasted efficiencies would remain at the 2013 level until the end of the forecast period. DOE recognizes the possibility that equipment efficiencies may change over time (*e.g.,* due to voluntary efficiency programs such as ENERGY STAR). But without historical information, DOE had no basis for estimating how much the equipment efficiencies may change. For today's supplemental notice, DOE maintained its estimate that the SWEF would remain constant from 2005 through the end of the forecast period.

b. Standards-Case Forecasted Efficiencies

For its determination of each of the cases with alternative standard levels (''standards cases''), DOE used a ''roll-up'' scenario in the October 2008 NOPR to establish the SWEF for 2013. In a roll-up scenario, equipment efficiencies in the base case which do not meet the standard level under consideration are projected to roll-up to meet the new standard level. Further, all equipment efficiencies in the base case that are above the standard level under consideration are not affected by the standard. The same scenario is used for the forecasted standards-case efficiencies as for the base-case efficiencies, namely, that forecasted efficiencies remained at the 2013 efficiency level until the end of the forecast period, as DOE has no data to reasonably estimate how such efficiency levels might change over the next 30 years. By maintaining the same rate of increase for forecasted efficiencies in the standards case as in the base case (*i.e.,* no change), DOE retained a constant efficiency difference between the two cases over the forecast period. Although the no-change trends may not reflect what would happen to base-case and standards-case equipment efficiencies in the future, DOE believes that maintaining a constant efficiency difference between the base case and standards case provides a reasonable estimate of the impact that standards have on equipment efficiency. It is more important to accurately estimate the efficiency difference between the standards case and base case, than to accurately estimate the actual equipment efficiencies in the standards and base cases. DOE retained the approach used in the October 2008 NOPR for today's SNOPR. But because the effective date of the standard is now assumed to be 2013, DOE applied the ''roll-up'' scenario in the year 2013 to establish the SWEF for each of the standards cases.

c. Annual Energy Consumption

The annual energy consumption per unit depends directly on equipment efficiency. For the October 2008 NOPR and today's SNOPR, DOE used the SWEFs associated with the base case and each standards case, in combination with the annual energy data, to estimate the shipment-weighted average annual per-unit energy consumption under the base case and standards cases. The national energy consumption is the product of the annual energy consumption per unit and the number of units of each vintage, which depends on shipments.

As noted above in section III.D, DOE used a relative price elasticity to estimate standards-case shipments for CCWs. As a result, shipments forecasted under the standards cases are lower than under the base case. To avoid the inclusion of energy savings from reduced shipments, DOE used the standards-case shipments projection and the standards-case stock to calculate the annual energy consumption in the base case. For CCWs, any drop in shipments caused by standards is estimated to result in the purchase of used machines. As a result, the standards-case forecast explicitly accounted for the energy and water consumption of new standard-compliant CCWs and also used machines coming into the market due to the drop in new equipment shipments.

DOE retained the use of the base-case shipments to determine the annual energy consumption in the base case and the approach used in the October 2008 NOPR for today's SNOPR.

d. Site-to-Source Conversion

To estimate the national energy savings expected from appliance standards, DOE uses a multiplicative factor to convert site energy consumption (energy use at the location where the appliance is operated) into primary or source energy consumption (the energy required to deliver the site energy). For the October 2008 NOPR, DOE used annual site-to-source conversion factors based on the version of NEMS that corresponds to *AEO 2008.* For today's SNOPR, DOE updated these conversion factors based on the *AEO 2009* March Release version of NEMS. These conversion factors account for natural gas losses from pipeline leakage and natural gas used for pumping energy and transportation fuel. For electricity, the conversion factors vary over time due to projected changes in generation sources (*i.e.,* the power plant types projected to provide electricity to the country). Since the *AEO* does not provide energy forecasts that go beyond 2030, DOE used conversion factors that remain constant at the 2030 values throughout the remainder of the forecast.

In response to a request from the DOE, Office of Energy Efficiency and Renewable Energy (EERE), the National Research Council (NRC) appointed a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' to conduct a study called for in Section 1802 of EPACT 2005.[28] The fundamental task before the committee was to evaluate the methodology used for setting energy

[28] The National Academies, Board on Energy and Environmental Systems, Letter to Dr. John Mizroch, Acting Assistant Secretary, U.S. DOE, Office of EERE from James W. Dally, Chair, Committee on Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards, May 15, 2009.

efficiency standards and to comment on whether site (point-of-use) or source (full-fuel-cycle) measures of energy efficiency better support rulemaking to achieve energy conservation goals. The NRC committee defined site (point-of-use) energy consumption as reflecting the use of electricity, natural gas, propane, and/or fuel oil by an appliance at the site where the appliance is operated, based on specified test procedures. Full-fuel-cycle energy consumption was defined as including, in addition to site energy use, the energy consumed in the extraction, processing, and transport of primary fuels such as coal, oil, and natural gas; energy losses in thermal combustion in power-generation plants; and energy losses in transmission and distribution to homes and commercial buildings.

In evaluating the merits of using point-of-use and full-fuel-cycle measures, the NRC committee noted that DOE uses what the committee referred to as ''extended site'' energy consumption to assess the impact of energy use on the economy, energy security, and environmental quality. The extended site measure of energy consumption includes the generation, transmission, and distribution but, unlike the full-fuel-cycle measure, does not include the energy consumed in extracting, processing, and transporting primary fuels. A majority of members on the NRC committee believe that extended site energy consumption understates the total energy consumed to make an appliance operational at the site. As a result, the NRC committee's primary general recommendation is for DOE to consider moving over time to use of a full-fuel-cycle measure of energy consumption for assessment of national and environmental impacts, especially levels of greenhouse gas emissions, and to providing more comprehensive information to the public through labels and other means, such as an enhanced Web site. For those appliances that use multiple fuels (*e.g.,* water heaters), the NRC committee believes that measuring full-fuel-cycle energy consumption would provide a more complete picture of energy used, allowing comparison across many different appliances as well as an improved assessment of impacts. The NRC committee also acknowledged the complexities inherent in developing a full-fuel-cycle measure of energy use and stated that a majority of the committee recommended a gradual transition to that expanded measure and eventual replacement of the currently used extended site measure. To improve consumers' understanding, the committee recommended that DOE and the Federal Trade Commission could evaluate potential indices of energy use and its impacts and could explore various options for label design and content using established consumer research methods.

DOE acknowledges that its site-to-source conversion factors do not capture the energy consumed in extracting, processing, and transporting primary fuels. DOE also agrees with the NRC committee's conclusion that developing site-to-source conversion factors that capture the energy associated with the extraction, processing, and transportation of primary fuels is inherently complex and difficult. As a result, DOE will evaluate whether moving to a full-fuel-cycle measure will enhance its ability to set energy-efficiency standards.

DOE also notes that the NRC committee's recommendation to use a full-fuel-cycle measure was especially focused on appliances using multiple fuels. For single-fuel appliances, the committee recommended that the current practice of basing energy efficiency requirements on the site measure of energy consumption should be retained. Although CCWs utilize heated water from both electric and natural gas water heaters and are credited with improved performance by reducing the energy used in electric and gas clothes dryers, the energy efficiency metric with which they are regulated, the MEF, is expressed in terms of electrical energy usage (cubic feet per kWh). As a result, for labeling and enforcement purposes, CCWs are a single-fuel appliance. Therefore, although a full-fuel-cycle measure may provide a better assessment of national and environmental impacts, it is not necessary for providing energy use comparisons among CCW models.

e. Energy Used in Water and Wastewater Treatment and Delivery

In the October 2008 NOPR, DOE did not include the energy required for water treatment and delivery. It stated that EPCA defines ''energy use'' to be ''the quantity of energy directly consumed by a consumer product at point of use, determined in accordance with test procedures under section 6293 of [42 U.S.C.].'' (42 U.S.C. 6291(4)) Based on the definition of ''energy use,'' DOE does not believe it has the authority to consider embedded energy (*i.e.,* the energy required for water treatment and delivery) in the analysis. Furthermore, even if DOE had the authority, it does not believe adequate analytical tools exist to conduct such an evaluation.[29]

The Joint Comment stated that DOE's purported legal justification ignores that EPCA not only provides ample authority for DOE to consider this impact, but actually commands its consideration in weighing the economic justification for efficiency standards. (Joint Comment, No. 44, pp. 12–13) It said that DOE's position that it lacks the authority to consider the energy embedded in water is untenable in light of 42 U.S.C. 6295(o)(2)(B)(i)(VII), which provides that in assessing the economic justification for a standard, DOE may consider any factors it concludes are relevant. It added that 42 U.S.C. 6295(o)(2)(B)(i)(III) directs DOE to consider, to the greatest extent practicable, ''the total projected amount of energy * * * savings likely to result directly from the imposition of such standard.'' It also stated that the plain language of EPCA thus commands that DOE assess the ''energy saving'' resulting from the standard, not simply the ''energy use'' of the covered products or equipment. Moreover, though the statute concerns those energy savings likely to ''result directly'' from the standard, that language merely requires DOE to isolate the standard's impact from other energy saving initiatives for purposes of the economic justification analysis. (Joint Comment, No. 44 at p. 12–13) Pacific Gas & Electric Company (PG&E) stated that because of the preciousness of water in California and the embodied energy in it, a higher standard for CCWs is merited. (PG&E, Public Meeting Transcript, No. 40.5 at pp. 136–137 and p. 181) Furthermore, PG&E commented that failing to consider energy in water due to the lack of an analytical tool is not acceptable. (PG&E, Public Meeting Transcript, No. 40.5 at pp. 178–179 and p. 183) Additional comments submitted by EJ, ASAP, and ACEEE, suggested that the energy embedded in the delivery and treatment of water and wastewater should be included in the determination of national energy savings from the standards proposed in the October 2008 NOPR. (EJ, Public Meeting Transcript,

[29] An analytical tool equivalent to EIA's NEMS would be needed to properly account for embedded energy impacts on a national scale, including the embedded energy due to water and wastewater savings. This new version of NEMS would need to analyze spending and energy use in dozens, if not hundreds, of economic sectors. This version of NEMS also would need to account for shifts in spending in these various sectors to account for the marginal embedded energy differences among these sectors. 72 FR 64432, 64498–99 (Nov. 15, 2007). DOE does not have access to such a tool or other means to accurately estimate the source energy savings impacts of decreased water or wastewater consumption and expenditures.

No. 40.5 at pp. 140–141 and p. 180; ASAP, Public Meeting Transcript, No. 40.5 at pp. 180–181; ACEEE, Public Meeting Transcript, No. 40.5 at p. 182)

DOE continues to maintain that it only has the authority to consider the quantity of energy directly consumed by the equipment at point of use, and the energy consumed in production and delivery of that energy, in determining the total projected amount of energy savings likely to result directly from the imposition of a standard. Although DOE does agree with the Joint Comment that energy is consumed in providing water and wastewater service, this energy is not directly consumed by the equipment or in production and delivery of the energy. Inclusion of the embedded energy associated with water and wastewater service, would, for completeness, also require inclusion of the energy associated with all other aspects of the installation and operation of the equipment, *e.g.* the manufacture, distribution, and installation of the equipment. Furthermore, since water districts charge all costs related to transporting, treating, and distributing water to their consumers, the embedded energy is already accounted for in the LCC analysis. Thus, while DOE could go through the theoretical exercise of disaggegrating energy costs from total water costs, the LCC results would not change since the total cost of operating equipment would not change.

f. Total Installed Costs and Operating Costs

The increase in total annual installed cost is equal to the difference in the per-unit total installed cost between the base case and standards case, multiplied by the shipments forecasted in the standards case. The annual operating cost savings per unit includes changes in energy, water, repair, and maintenance costs. DOE forecasted energy prices for the October 2008 NOPR based on *AEO 2008;* it updated the forecasts for today's SNOPR using data from *AEO 2009* April Release. For today's SNOPR, DOE maintained the accounting system it used to develop repair and maintenance costs for more efficient CCWs in the October 2008 NOPR.

g. Discount Rates

DOE multiplies monetary values in future years by the discount factor to determine the present value. DOE estimated national impacts using both a 3-percent and a 7-percent real discount rate, in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis (OMB Circular A–4 (Sept.17, 2003), section E, ''Identifying and Measuring Benefits and Costs'').[30] The Joint Comment stated that DOE should use a 2 to 3 percent real discount rate for national impact analyses. (Joint Comment, No. 44 at p. 11) It noted that societal discount rates are the subject of extensive academic research, and the weight of academic opinion is that the appropriate societal discount rate is 3 percent or less. It urged DOE to give primary weight to results based on the lower of the discount rates recommended by OMB. OMB Circular A–4 references an earlier Circular A–94, which states that a real discount rate of 7 percent should be used as a base case for regulatory analysis. The 7 percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy. It approximates the opportunity cost of capital, and, according to Circular A–94, it is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector. OMB later found that the average rate of return to capital remains near the 7-percent rate estimated in 1992. Circular A–4 also states that when regulation primarily and directly affects private consumption, a lower discount rate is appropriate. ''The alternative most often used is sometimes called the social rate of time preference * * * the rate at which ''society'' discounts future consumption flows to their present value.'' It suggests that the real rate of return on long-term government debt may provide a fair approximation of the social rate of time preference, and states that over the last 30 years, this rate has averaged around 3 percent in real terms on a pre-tax basis. It concludes that ''for regulatory analysis, [agencies] should provide estimates of net benefits using both 3 percent and 7 percent.'' Consistent with OMB's guidance, DOE did not give primary weight to results derived using a 3-percent discount rate.

DOE also received comments regarding the discounting of emissions. The Joint Comment stated that DOE should not apply a discount rate to physical units of measure, such as tons of emissions or quads of energy. (Joint Comment, No. 44 at p. 11) Consistent with Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51737 (Oct. 4, 1993), DOE follows the guidance of OMB regarding methodologies and procedures for regulatory impact analysis that affect more than one agency. Regarding energy and environmental benefits from energy conservation standards, DOE reported both discounted and undiscounted values. DOE retained the approach used in the October 2008 NOPR for today's SNOPR.

h. Effects of Standards on Energy Prices

For the October 2008 NOPR, DOE conducted an analysis of the impact of reduced energy demand associated with possible standards on CCWs on prices of natural gas and electricity. The Joint Comment stated that the electricity price mitigation effects of the standard proposed in the October 2008 NOPR should be documented and the value of reduced electricity bills to all consumers quantified as a benefit. (Joint Comment, No. 44 at p. 11) The DOE analysis found that gas and electric demand reductions resulting from max-tech standards for CCWs would have no detectable change on the U.S. average wellhead natural gas price or the average user price of electricity. DOE concluded that CCW standards will not provide additional economic benefits resulting from lower energy prices. Thus, for today's SNOPR DOE has made no change to its assumptions about the effects of standards on energy prices. See chapter 11 of the SNOPR TSD for more details.

F. Consumer Subgroup Analysis

In the October 2008 NOPR, DOE analyzed the potential effects of CCW standards on two subgroups: (1) Consumers not served by municipal water and sewer providers, and (2) small businesses. For consumers not served by water and sewer, DOE analyzed the potential impacts of standards by conducting the analysis with well and septic system prices, rather than water and wastewater prices based on RFC/AWWA data. For small CCW businesses, DOE analyzed the potential impacts of standards by conducting the analysis with different discount rates, because small businesses do not have the same access to capital as larger businesses. DOE estimated that for businesses purchasing CCWs, the average discount rate for small companies is 3.5 percent higher than the industry average. Due to the higher costs of conducting business, as evidenced by their higher discount rates, the benefits of CCW standards for small businesses will be lower than for the general population of CCW owners. For today's SNOPR DOE has made no changes to its assumptions about benefits of CCW standards to small businesses.

DOE received comments regarding the economic impacts of higher initial clothes washer costs. Alliance and MLA stated that the standards proposed in

[30] OMB circulars are available online at: *http://www.whitehouse.gov/omb/circulars/.*

the October 2008 NOPR would result in substantial price increases for customers of central area laundry rooms, especially for elderly, low-income, college students, and disabled end-users. MLA stated that a majority of the 35–50 million CCW customers are low- or low-to-middle income people, many of whom are elderly or who suffer disabilities. (Alliance, No. 45 at p. 1 and Attachment 2, p. 12; MLA, No. 49 at pp. 1–4) PG&E commented that lower-income consumers may pay higher energy costs in laundry rooms using older machines than those who have access to new machines. (PG&E, Public Meeting Transcript, No. 40.5 at p. 25) DOE research suggests that the end-users of CCWs are unlikely to be the owners of the equipment. Although low-income end-users do utilize CCWs, it is unknown to what affect more efficient CCWs will impact their cost of using the equipment. If the price of operating a CCW to an end-user does increase, DOE estimates that such an increase would occur only if the CCW owner needed to increase the price of operation to recover or capture its increased costs of providing more efficient equipment while not benefitting from the lower utility consumption. Although DOE does recognize that this could occur, it is equally likely that the price of operation to end-users would not increase as the increased expense to the CCW owner of providing more efficient CCWs is more than offset by lifetime utility bill savings from the more-efficient CCW. More details on the consumer subgroup analysis can be found in chapter 12 of the SNOPR TSD.

G. Manufacturer Impact Analysis

DOE performed an MIA to estimate the financial impact of amended energy conservation standards on CCW manufacturers, and to calculate the impact of such standards on domestic manufacturing employment and capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the GRIM—an industry-cash-flow model customized for this rulemaking. The GRIM inputs are data characterizing the industry cost structure, shipments, and revenues. The key output is the INPV. Different sets of assumptions (scenarios) will produce different results. The qualitative part of the MIA addresses factors such as equipment characteristics, characteristics of particular firms, and market and equipment trends, and it also includes an assessment of the impacts of standards on subgroups of manufacturers. DOE outlined its methodology for the MIA in the October 2008 NOPR. 73 FR 62034, 62075–81 (Oct. 17, 2008). The complete MIA for the October 2008 NOPR is presented in chapter 13 of the NOPR TSD.

For today's supplemental notice, DOE updated the MIA results based on several changes to other analyses that impact the MIA. The total shipments and efficiency distributions were updated using the new estimates outlined in the SNOPR NIA. The MIA also uses the new analysis period in the NIA (2013–2043) and has updated the base year to 2009. As discussed in section III.C.2, DOE updated the manufacturer production costs and the capital and equipment conversion costs to 2008$ using the producer price index for commercial laundry equipment manufacturing (NAICS 333312). DOE updated the GRIM to allow the inclusion of Federal production tax credits. DOE discusses the assumptions and methodology used to calculate the Federal production tax in appendix 13C and in the section below. For details of the MIA, see chapter 13 of the SNOPR TSD.

DOE also received a number of comments from interested parties in response to the MIA analysis presented in the October 2008 NOPR. Alliance stated that the top-loading CCW energy conservation standard proposed in the October 2008 NOPR would eliminate Alliance from the CCW market, and eliminate top-loading CCWs from the market as well. (Alliance, No. 45 at Attachment 2, p. 3) Alliance stated that, if it were to exit the CCW market, the CCW market would suffer significant competitive harm. Alliance also stated that more than 20 route operators and the MLA are opposed to the standard proposed in the October 2008 NOPR because it would result in a loss of competition. (Alliance, No. 45 at p. 1 and Attachment 2, pp. 6–12) Alliance stated that the lower CCW market competition could lead to price increases from Alliance's competitors, such as the combined Whirlpool and Maytag entities, which currently control 72 percent of the RCW market. Alliance predicted that these manufacturers would control about 90 percent of the CCW market if Alliance were to stop making CCWs. Alliance sees this outcome as a monopoly for Whirlpool. (Alliance, Public Meeting Transcript, No. 40.5 at p. 24)

Alliance stated that it cannot justify the investment necessary to develop the technology required to reach the top-loading energy conservation standard proposed in the October 2008 NOPR. Alliance cited a lack of resources as the LVM to justify an investment in a ''non-traditional'' top-loader with unknown market acceptance (Alliance, No. 45 at Attachment 2, p. 8). Alliance stated that the top-loading standard proposed in the October 2008 NOPR would likely result in significant, detrimental impacts to the LVM, as Alliance does not have the resources for research and development, re-configuring production lines, or licensing the advanced technology required to meet the standard. (Alliance, Public Meeting Transcript, pp. 23–24) Alliance believes that a top-loading energy conservation standard set at 1.42 MEF/9.5 WF would lessen these impacts. Alliance suggested that the top-loading CCW energy conservation standard proposed in the October 2008 NOPR would force Alliance to cease production of CCWs due to the high investment costs required to design and manufacture the technology to meet the standard. (Alliance, Public Meeting Transcript, No. 40.5 at pp. 22–24 and p. 202; Alliance, No. 45 at Attachment 2, pp. 7–8) Alliance estimates these costs based on its belief that non-traditional technology will be required to meet the standard with wash performance that would be acceptable for commercial laundromat use.

MLA commented that the top-loading CCW standard proposed in the October 2008 NOPR would most likely result in the elimination of all but one manufacturer of top-loading CCWs (Whirlpool) as well as the elimination of many route operators due to higher equipment costs resulting from reduced competition. (MLA, No. 49 at pp. 1–3) Finally, EEI suggested that DOE create a standard that will save energy and be market neutral, such that multiple manufacturers could meet it. (EEI, No. 56 at pp. 2–3)

EPCA directs DOE to consider any lessening of competition that is likely to result from standards. It directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary, not later than 60 days after the publication of a proposed rule, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)). DOE received a response from the Acting Assistant Attorney General on December 16, 2008. The letter stated that the Department of Justice (DOJ) is not in a position to judge whether CCW manufacturers will be able to meet the standards proposed in the October 2008 NOPR. Nevertheless, DOJ found a ''real risk that one or more of these manufacturers cannot meet the proposed standard'' for top-loading CCWs published in the October 2008

NOPR. (Attorney General, No. 53 at p. 2)

In the October 2008 NOPR, DOE noted the concerns regarding the proposed conservation standards for top-loading CCWs in particular. 73 FR 62034, 62103–104 (Oct. 17, 2008). DOE also included a section in chapter 13 of the TSD that estimated likely financial impacts for the LVM to meet the efficiency standards proposed in the 2008 NOPR. DOE continues to offer a sub-group assessment of the differential impacts on the LVM in chapter 13.

In response to concerns raised by DOJ and other concerns raised by interested parties, DOE is proposing in today's SNOPR a 1.60 MEF/8.5 WF standard for top-loading CCWs. DOE believes that this proposed energy conservation standard will greatly ease the competitive concerns of Alliance, GE, MLA, and DOJ. DOE research suggests that today's proposed standard is within reach of all competitors in the market, since the max-tech unit is based on a standard RCW top-loading platform (*i.e.* one with an agitator) and that no proprietary technologies were used. DOE research suggests that Alliance currently produces a model with 1.5 MEF/8.8 WF that DOE believes can be modified to meet today's proposed standard. As such, a dramatic decline in competition in the CCW industry does not seem likely since all manufacturers should be able to release a washer with similar technology at the present efficiency level. DOE requests comment on competitive concerns at today's proposed standard.

Alliance and GE commented that the top-loading standard proposed in the October 2008 NOPR would have a detrimental impact on the CCW industry and labor force. (Alliance, Public Meeting Transcript, No. 40.5 at pp. 23–24; Alliance, No. 45 at Attachment 2, p. 3; GE, Public Meeting Transcript, No. 40.5 at pp. 31–32) Furthermore, Alliance stated that no manufacturer will be willing to use an unproven non-traditional design in the commercial market, resulting in the elimination of top-loading CCW production. With manufacturers like Alliance exiting the business, over 1,000 jobs would be lost. Alliance also stated that there could be spillover harm because Alliance could also exit other laundry market segments. (Alliance, No. 45 at Attachment 2, p. 17)

For the October 2008 NOPR, DOE calculated the direct employment impacts using the GRIM and information gathered from interviews with manufacturers. In the October 2008 NOPR, DOE estimated that there would be positive employment impacts among domestic commercial clothes washer manufacturers for TSL 1 through TSL 5. Because production labor expenditures are assumed to be a fixed percentage of the Cost of Goods Sold (COGS) and the Manufacturing Product Costs (MPCs) increase with more efficient equipment, labor tracks the increased prices in the GRIM. The GRIM predicts a steady level of domestic employment after standards at a level based on the increase in relative price. Because the LVM had previously stated it would be eliminated from the commercial market, DOE also specifically investigated the LVM employment using its commercial washer revenues and additional employment estimates. DOE's scenarios included one in which the LVM ceased to produce soft-mount washers or standard dryers and a scenario with a complete closure of the LVM's domestic manufacturing plant. DOE estimated that the LVM's ceasing to produce soft-mount dryers and CCWs would result in 292 lost production jobs and that a complete closure of the facility would result in the dismissal of approximately 600 factory employees. 73 FR 60234, 62102–3 (Oct. 17, 2008). DOE believes that the energy conservation standard proposed in today's notice will allow the LVM to continue to produce top-loading CCWs, mitigating any potential closure of its domestic manufacturing facility. Further discussion of the LVM and the potential impacts on direct employment for the CCW industry is presented in chapter 13 of the TSD.

DOE received comments on the likely benefits of Federal producer tax credits for which some CCW manufacturers could be eligible. Such credits accrue to manufacturers on the basis of appliance or equipment efficiencies as well as other eligibility requirements. The Joint Comment stated that DOE did not account for Federal production tax credits for efficient appliances produced after 2007 in the MIA and that the LVM is likely to disproportionately benefit from these Federal production tax incentives. According to the Joint Comment, the Federal production tax credits should substantially off-set conversion capital requirements and equipment conversion expenses, mitigating the financial impacts of higher efficiency levels. (Joint Comment, No. 44 at pp. 7–10)

For the October 2008 NOPR, DOE did not fully account for the impacts of the Federal production tax credits updated by The Energy Improvement and Extension Act of 2008 (Pub. L. 110–343; EIEA 2008). However, DOE research suggests that the Joint Comment overstates the potential benefits that CCW manufacturers would accumulate through the tax credits found in EIEA 2008. A key assumption in the Joint Comment analysis is that all major CCW manufacturers indentified for this rulemaking would be able to benefit from the tax credit (Joint Comment, No. 44 at pp. 8–9). According to the title III, section 305 (b)(2) from EIEA 2008, and title I section 1334 (c)(1)(B) from EPACT 2005, the tax credit is only awarded for equipment produced in the United States. Using market research and interviews with manufacturers, DOE believes that only the LVM produces qualifying CCWs. Other manufacturers offer washers that meet the MEFs and WF requirements, but these washers are either made outside the United States or are sourced from other domestic manufacturers, or are not sold in the commercial market. See appendix 13C of the SNOPR TSD for further discussion of the Federal production tax credit.

According to the Joint Comment, the Federal production tax credit could be used by the industry to offset the conversion costs necessary to comply with the energy conservation standards proposed in the October 2008 NOPR. (Joint Comment, No. 44 at p. 7) In its analysis, the Joint Comment does not account for any conversion costs associated with a complete production transfer of top-load to front-load washers. The equipment conversion and capital conversion cost shown in the GRIM and chapter 13 take all existing front-loading washers into consideration, including those that qualify for the Federal production tax credit. In its calculation of the equipment and capital conversion costs, DOE considered that the LVM already had qualifying washers at both 2.0 MEF/6.0 WF and 2.2 MEF/4.5 WF levels; hence, no additional product development appeared necessary to achieve these efficiency levels. Therefore, DOE did not include any capital or product conversion costs in the GRIM for the LVM at a 2.0 MEF level. However, DOE research suggested that the LVM would have some capital conversion costs if the front-loading efficiency level were raised to 2.2 MEF, because the production levels of such washers would have to dramatically increase from present shipment levels.

DOE acknowledges that the Federal production tax credit could have mitigating effects in lessening the impacts due to energy conservation standards. However, as described above and in appendix 13C, DOE estimates the benefits of Federal production tax credits for CCW manufacturers will not greatly mitigate the impacts due amended energy conservation

standards. In the GRIM, DOE accounts for the Federal tax credit as a direct cash benefit in the base and standards cases that increases the INPV. This increase in industry value lessens the impacts on manufacturers due to amended energy conservation standards. However, because the benefit of the Federal production tax credit is less significant than calculated in the Joint Comment and mostly occurs outside the analysis period, the benefits do not substantially impact the INPV calculated by DOE.

Because only the LVM produces qualifying CCWs, DOE based its estimates of the potential benefits to the CCW industry by estimating the potential Federal production tax credits that the LVM could receive. Using publically available information, recent SEC filings, and the information published in chapter 13 and appendix 13A of the October 2008 NOPR, DOE estimated the LVM's front-loading CCW shipment projections to 2010. These estimates suggest that the LVM could collect $2.8 million in Federal production tax credits from 2008–2010 from the provisions updated by EIEA 2008 and $4.1 million from the program from 2007 to 2010. Based on its calculations, the LVM received the biggest benefit from the tax credit in 2008. According to the ENERGY STAR database,[31] the LVM released a model that qualified for the $250 Federal production tax credit on September 26, 2008, shortly before EIEA 2008 was enacted. Because the higher tax credits were retroactive for all of 2008, the LVM received a $2.4 million Federal tax credit in 2008 because it had substantially increased production of qualifying front-loading CCWs. Using the LVM's SEC Form 10–Q for the quarter ending March 31, 2009,[32] DOE estimates that in 2009 the LVM will receive $385,000 in Federal production tax credits. DOE estimates that the LVM is unlikely to qualify for any additional Federal production tax credit in 2010 even if the volume of qualifying washers increases. DOE has a more extensive explanation of its calculations of the Federal production tax credits in appendix 13C of the SNOPR TSD.

The Joint Comment bases its analysis on manufacturers completely shifting production to front-loading washers. However, DOE believes that it is unlikely all manufacturers would shift production to exclusively front-loading washers in response to the Federal production tax credits or the energy conservation standards proposed in today's rule. As discussed in section III.E, in response to the Federal production tax credit, DOE estimates that the tax credits would permanently transform the market so that front-loading washers would continue to comprise 30 percent of the market over the entire forecast period. This shift towards front-loading washers has mitigating effects on the impacts on manufacturers due to energy conservation standards. However, the shift is not great enough to significantly decrease the impacts as the Joint Comment suggests. Using the same assumptions used for calculations found in appendix 13A, DOE estimates that the LVM increased the production of front-loading washers by approximately 10,000 washers in 2007 and 2008. Though the estimates show that there were significant increases in front-loading shipments for the LVM in 2007 and 2008, shipments for fiscal year 2009 are projected to decrease and hence reduce the Federal production tax credits.

The Joint Comment acknowledges but does not account for factors that would offset the benefits from the Federal production tax credit that would accrue to CCW manufacturers. In its LVM analysis for the October 2008 NOPR, DOE examined the capital costs that would be required to create a front-loading washer facility for 100,000 annual unit shipments. DOE estimated that a green-field facility with all production equipment would cost the LVM approximately $54 million. In that same analysis, DOE estimated that the total tooling required would cost approximately $18 million. If the LVM had to invest to exclusively offer front-loading washers, these investments would more than offset the benefit calculated in the Joint Comment for all CCW manufacturers. In fact, the tooling alone would more than eliminate the benefit calculated for the entire CCW industry in the Joint Comment. The Joint Comment states that the LVM is in a position to disproportionately benefit from the Federal production tax credit. (Joint Comment, No. 44 at p. 8) While DOE acknowledges that the LVM is the only manufacturer eligible to receive a Federal production tax credit in the CCW market, DOE research suggests that the LVM would not disproportionately benefit because the costs to upgrade its production facilities for higher-volume front-loading washer manufacturing, in addition to necessary redesigns of its existing front-loading washers, are estimated to be multiples of the tax credit. For further information, see appendix 13C of the SNOPR TSD. The Joint Comment also states that part of the Federal production tax credit will need to be shared with distributors and customers to stimulate growth. (Joint Comment, No. 44 at p. 9) However, the Joint Comment does not reduce the benefit to the CCW industry that would occur if manufacturers did not keep all of the tax credit.

DOE received comment regarding its characterization of CCW manufacturers and the LVM in particular. The Joint Comment argued that DOE should not characterize Alliance as an LVM, as the LVM reported revenues equivalent to approximately half of the total CCW revenue and claims to be the leading manufacturer of stand-alone commercial laundry equipment in North America. (Joint Comment, No. 44 at p. 7) For the October 2008 NOPR, DOE presented a separate analysis of the LVM. 73 FR 62034, 62103–104 (Oct. 17, 2008). Although DOE agrees with the Joint Comment that the LVM has a significant share of the CCW industry based on revenues in reports filed with the SEC, DOE believes that the LVM does not have the same overall clothes washer manufacturing scale as its competitors (for both residential products and commercial equipment) and should be characterized as an LVM.

In the LVM analysis, DOE notes that most CCWs on the market in the United States are based largely on RCW platforms that are upgraded selectively. Some investments (such as the controllers) are CCW-specific but only make up part of the total unit cost. The majority of capital expenditures related to tooling, equipment, and other machinery in a plant can usually be applied to the residential as well as the commercial market. Thus, overall (both RCW and CCW) manufacturing scale has a significant impact on the cost-effectiveness of potential upgrades. A manufacturer with a high-volume residential line can cost justify much more capital-intensive solutions if they are applicable in both markets, in contrast to an LVM which lacks the scale to make the investments worthwhile. Thus, an LVM may be required to purchase upgrade options from third-party vendors instead of developing in-house solutions that reduce costs at higher volumes. In the clothes washer market, the most direct CCW competitor has over 60 times the overall shipment volumes of the LVM. This scale difference also relates to purchasing power. A large, diversified appliance manufacturer can use its production scale to achieve better prices

[31] ENERGY STAR Qualified Commercial Clothes Washers. Available online at: *http://www.energystar.gov/index.cfm?fuseaction=clotheswash.display_commercial_cw.*

[32] The Alliance 10–Q Form is available at *http://sec.gov/Archives/edgar/data/1063697/000119312509107306/d10q.htm.*

for raw materials and commonly purchased components like controllers, motors, belts, switches, sensors, and wiring harnesses. Even if a large company purchases fewer items of a certain component, its overall revenue relationship with a supplier may still enable it to achieve better pricing than a smaller competitor, even if that competitor buys certain components in higher quantities. Lastly, high-volume manufacturers benefit from being able to source their components through sophisticated supply chains on a worldwide basis. A low-volume manufacturer is unlikely to be able to compete solely on manufacturing cost.

DOE seeks comment on the determination of manufacturer impacts, including the effects of manufacturer tax credits and competitive concerns. This is identified as Issue 5 in section VII.E of today's supplemental notice (Issues on Which DOE Seeks Comment.)

H. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts include direct and indirect impacts. Direct employment impacts are changes in the number of employees for manufacturers of equipment subject to standards, their suppliers, and related service firms. The MIA addresses these impacts.

Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, due to: (1) Reduced spending by end users on energy (electricity, gas (including liquefied petroleum gas), and oil); (2) reduced spending on new energy supply by the utility industry; (3) increased spending on the purchase price of new equipment; and (4) the effects of those three factors throughout the economy. DOE expects the net monetary savings from standards to be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity to affect the demand for labor in the short term, as explained below.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sectoral employment statistics developed by the BLS. The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy. There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital intensive and less labor intensive than other sectors. (See Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System* (RIMS II), Washington, DC, U.S. Department of Commerce (1992).) Efficiency standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.*, the utility sector) to more labor-intensive sectors (*e.g.*, the retail and manufacturing sectors). Thus, based on the BLS data alone, DOE believes net national employment will increase due to shifts in economic activity resulting from standards for CCWs.

In developing the October 2008 NOPR and today's SNOPR, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies (ImSET).[33] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model with structural coefficients to characterize economic flows among 188 sectors most relevant to industrial, commercial, and residential building energy use. The Joint Comment stated that DOE must consider its projections that an increase in employment will result from the adoption of standards in weighing the economic costs and benefits of strong efficiency standards. (Joint Comment, No. 44 at p. 13) As described in section V.B.3 below, DOE takes into consideration the indirect employment impacts estimated using ImSET when evaluating alternative standard levels. Direct employment impacts on the manufacturers that produce CCWs are analyzed in the MIA, as discussed in section III.G. For today's SNOPR, DOE has made no change to its method for estimating employment impacts. For further details, see chapter 15 of the SNOPR TSD.

[33] More information regarding ImSET is available online at: *http://www.pnl.gov/main/publications/external/technical_reports/PNNL-15273.pdf.*

I. Utility Impact Analysis

The utility impact analysis estimates the change in the forecasted power generation capacity for the Nation, which would be expected to result from adoption of new standards. This analysis separately determines the changes to supply and demand as a result of natural gas, fuel oil, liquefied petroleum gas, or electricity residential consumption savings due to the standard. For the October 2008 NOPR and today's SNOPR, DOE calculated this change using the NEMS–BT computer model. NEMS–BT models certain policy scenarios such as the effect of reduced energy consumption per TSL by fuel type. The analysis output provides a forecast for the needed generation capacities at each TSL. The estimated net benefit of the standard for today's SNOPR is the difference between the forecasted generation capacities by NEMS–BT and the *AEO 2009* April Release Reference Case. DOE obtained the energy savings inputs associated with electricity and natural gas consumption savings from the NIA. These inputs reflect the effects of efficiency improvement on CCW energy consumption, both fuel (natural gas) and electricity. Chapter 14 of the SNOPR TSD presents results of the utility impact analysis.

In its October 2008 NOPR, DOE did not estimate impacts on water and wastewater utilities because the water and wastewater utility sector is more complicated than either the electric utility or gas utility sectors, with a high degree of geographic variability produced by a large diversity of water resource availability, institutional history, and regulatory context. 73 FR 62034, 62082 (Oct. 17, 2008). For today's SNOPR, for the reasons cited above, DOE did not estimate impacts to the water and wastewater utility sector.

J. Environmental Assessment

Pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) 42 U.S.C. 6295(o)(2)(B)(i)(VI), DOE prepared a draft environmental assessment (EA) of the potential impacts of the proposed standards for CCWs it considered for today's supplemental notice which it has included as chapter 16 of the TSD for the SNOPR. DOE found the environmental effects associated with the standards for CCWs to be insignificant. Therefore, DOE is issuing a Finding of No Significant Impact (FONSI), pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for

compliance with NEPA (10 CFR part 1021). The FONSI is available in the docket for this rulemaking.

In the EA, DOE estimated the reduction in power sector emissions of CO_2 and NO_X using the NEMS–BT computer model. DOE also calculated a range of estimates for reduction in Hg emissions using power sector emission rates. The EA does not include the estimated reduction in power sector impacts of sulfur dioxide (SO_2), because DOE has determined that any such reduction resulting from an energy conservation standard would not affect the overall level of SO_2 emissions in the United States due to the presence of national caps on SO_2 emissions. These topics are addressed further below; see chapter 16 of the TSD for additional detail.

NEMS–BT is run similarly to the *AEO 2009 April Release* NEMS, except that CCW energy use is reduced by the amount of energy saved (by fuel type) due to the TSLs. The inputs of national energy savings come from the NIA analysis. For the EA, the output is the forecasted physical emissions. The net benefit of a standard is the difference between emissions estimated by NEMS–BT and the *AEO 2009* April Release Reference Case. The NEMS–BT tracks CO_2 emissions using a detailed module that provides results with broad coverage of all sectors and inclusion of interactive effects.

Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for all electric generating units. The attainment of the emissions cap is flexible among generators and is enforced through the use of emissions allowances and tradable permits. In other words, with or without a standard, total cumulative SO_2 emissions will always be at or near the ceiling, while there may be some timing differences between year-by-year forecast. Thus, it is unlikely that there will be reduced SO_2 emissions from standards as long as there is enforcement of the emissions ceilings. Although there may not be an actual reduction in SO_2 emissions, there still may be an economic benefit from reduced demand for SO_2 emission allowances. Electricity savings decrease the generation of SO_2 emissions from power production, which can lessen the need to purchase SO_2 emissions allowance credits, and thereby decrease the costs of complying with regulatory caps on emissions.

NO_X emissions from 28 eastern States and the District of Columbia (D.C.) are limited under the Clean Air Interstate Rule (CAIR), published in the **Federal Register** on May 12, 2005.[34] Although CAIR has been remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), it will remain in effect until it is replaced by a rule consistent with the Court's July 11, 2008 opinion in *North Carolina* v. *EPA*.[35] Because all States covered by CAIR opted to reduce NO_X emissions through participation in cap and trade programs for electric generating units, emissions from these sources are capped across the CAIR region.

For the 28 eastern States and D.C. where CAIR is in effect, no NO_X emissions reductions will occur due to the permanent cap. Under caps, physical emissions reductions in those States would not result from the energy conservation standards under consideration by DOE, but standards might have produced an environmentally related economic impact in the form of lower prices for emissions allowance credits, if they were large enough. However, DOE determined that in the present case, such standards would not produce an environmentally related economic impact in the form of lower prices for emissions allowance credits, because the estimated reduction in NO_X emissions or the corresponding allowance credits in States covered by the CAIR cap would be too small to affect allowance prices for NO_X under the CAIR. In contrast, new or amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by CAIR. As a result, the NEMS–BT does forecast emission reductions from the CCW standards considered in today's supplemental notice.

In the October 2008 NOPR, however, DOE provided a different estimate of NO_X reductions, because DOE assumed that the CAIR had been vacated. 74 FR 16920, 17009–14 (April 13, 2009). This is because the CAIR was vacated by the D.C. Circuit in its July 11, 2008 decision in *North Carolina* v. *Environmental Protection Agency*. 531 F.3d 896 (D.C. Cir. 2008). Thus, for the October 2008 NOPR, DOE established a range of NO_X reductions based on low and high emissions rates (in kt of NO_X emitted per terawatt-hour (TWh) of electricity generated) derived from the *AEO 2008*. DOE anticipated that, in the absence of the CAIR's trading program, the new or amended energy conservation standards would reduce NO_X emissions nationwide, not just in 22 States.

Similar to SO_2 and NO_X, future emissions of Hg would have been subject to emissions caps under Clean Air Mercury Rule (CAMR) [70 FR 28606 (May 18, 2005)], which would have permanently capped emissions of Hg for new and existing coal-fired plants in all States by 2010, but the CAMR was vacated by the D.C. Circuit in its decision in *New Jersey* v. *Environmental Protection Agency* prior to the publication of the October 2008 NOPR. 517 F.3d 574 (D.C. Cir. 2008). However, the NEMS–BT model DOE initially used to estimate the changes in emissions for the proposed rule assumed that Hg emissions would be subject to CAMR emission caps.

After CAMR was vacated, DOE was unable to use the NEMS–BT model to estimate any changes in the physical quantity of Hg emissions (anywhere in the country) that would result from standard levels it considered in the October 2008 NOPR. Instead, DOE used an Hg emission rate (in metric tons of Hg per energy produced) based on the *AEO 2008*. Because virtually all Hg emitted from electricity generation is from coal-fired power plants, DOE based the emission rate on the metric tons of Hg emitted per TWh of coal-generated electricity. To estimate the reduction in Hg emissions, DOE multiplied the emission rate by the reduction in coal-generated electricity associated with standards considered. Because the CAMR is still vacated, DOE continued to use the approach utilized for the October 2008 NOPR, updated for the *AEO 2009* April Release to estimate the Hg emission reductions due to standards for today's SNOPR.

In addition to electricity, the operation of gas-fired CCWs results in emissions of CO_2 and NO_X at the sites where the appliances are used. NEMS–BT provides no means for estimating such emissions. Therefore, DOE calculated separate estimates of the effect of the potential standards on site emissions of CO_2 and NO_X based on emissions factors derived from the literature. Because natural gas combustion does not yield SO_2 emissions, DOE did not report in either the October 2008 NOPR or today's SNOPR the effect of the proposed standards on site emissions of SO_2.

K. Monetizing Carbon Dioxide and Other Emissions Impacts

DOE also calculated the possible monetary benefit of CO_2, NO_X, and Hg reductions. Cumulative monetary benefits were determined using discount rates of 3 and 7 percent. DOE monetized reductions in CO_2 emissions due to standards in this proposed rule

[34] 70 FR 25162 (May 12, 2005).

[35] 531 F.3d 896 (D.C. Cir. 2008); see also *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008).

based on a range of monetary values drawn from studies that attempt to estimate the present value of the marginal economic benefits (based on the avoided marginal social costs of carbon) likely to result from reducing greenhouse gas emissions. The marginal social cost of carbon is an estimate of the monetary value to society of the environmental damages of CO_2 emissions.

Several parties provided comments regarding the economic valuation of CO_2 for the October 2008 NOPR. Whirlpool does not support an attempt to value those emissions as part of this rulemaking. (Whirlpool, No. 50 at p. 8) EEI stated that utilities have embedded the cost of complying with existing environmental legislation in their price for electricity, and a similar approach may be reasonable for valuing reduced CO_2 emissions. (EEI, Public Meeting Transcript, No. 40.5 at pp. 194–195) The Joint Comment stated that DOE's valuation of avoided CO_2 emissions should utilize EIA's analysis of the Climate Security Act. The core scenario of this analysis yields a $17 price per ton of CO_2, with an annual 7.4 percent increase. (Joint Comment, No. 44 at p. 12) As discussed in section V.B.6, DOE has updated the approach described in the October 2008 NOPR (73 FR 62034, 62107 (Oct. 17, 2008)) for its monetization of environmental emissions reductions for today's SNOPR.

Although this rulemaking does not affect SO_2 emissions or NO_X emissions in the 28 eastern States and D.C. where CAIR is in effect, there are markets for SO_2 and NO_X emissions allowances. The market clearing price of SO_2 and NO_X emissions allowances is roughly the marginal cost of meeting the regulatory cap, not the marginal value of the cap itself. Further, because national SO_2 and NO_X emissions are regulated by a cap and trade system, the cost of meeting these caps is included in the price of energy. Thus, the value of energy savings already includes the value of SO_2 and NO_X control for those consumers experiencing energy savings. The economic cost savings associated with SO_2 and NO_X emissions caps is approximately equal to the change in the price of traded allowances resulting from energy savings multiplied by the number of allowances that would be issued each year. That calculation is uncertain because the energy savings from new or amended standards for CCWs would be so small relative to the entire electricity generation market that the resulting emissions savings would have almost no impact on price formation in the allowances market. These savings would most likely be outweighed by uncertainties in the marginal costs of compliance with SO_2 and NO_X emissions caps.

As reported above in section III.D.4.a, the Joint Comment stated that to realistically depict energy prices in the future, DOE must consider the impact of carbon control legislation, since such legislation is very likely. The Joint Comment also noted that there are regional cap and trade programs that are in effect in the Northeast (Regional Greenhouse Gas Initiative (RGGI)) and the West (Western Climate Initiative (WCI)) that will impact the price of electricity and are not reflected in the *AEO* energy price forecasts. (Joint Comment, No. 44 at p. 12) EJ stated that caps will likely be in place by the time new standards become effective, so DOE should increase its electricity prices to reflect the cost of complying with emission caps. (EJ, Public Meeting Transcript, No. 40.5 at pp. 105–106)

In response, DOE incorporated current trends in its analysis, but expressly did not include possible future legislation in this rulemaking. The current NEMS–BT model used in projecting the environmental impacts includes the CAIR rule, as described above, which is projected to reduce SO_2 and NO_X emissions. NEMS–BT also takes into account the current set of State-level renewable portfolio standards, the effect of the RGGI, and utility investor reactions to the possibility of future CO_2 cap and trade programs, all of which impact electricity prices and reduce the projected carbon intensity of generation. The most recent Reference Case, *AEO 2009*, is available at *http://www.eia.doe.gov/oiaf/servicerpt/stimulus/index.html*, and documentation of the *AEO 2009* assumptions is available at *http://www.eia.doe.gov/oiaf/aeo/assumption/index.html*.

In its October 2008 NOPR, DOE conducted a separate analysis of wastewater discharge impacts as part of the environmental assessment for commercial clothes washers. 73 FR 62034, 62112–3 (Oct. 17, 2008). For today's supplemental proposed rule, DOE retained the same analysis method for estimating wastewater discharge impacts. The results are presented below in section V.B.6.

DOE seeks comment on the determination of environmental impacts. This is identified as Issue 6 in section VII.E of today's supplemental notice (Issues on Which DOE Seeks Comment).

IV. Discussion of Other Comments

A. Proposed TSLs for Commercial Clothes Washers

For the October 2008 NOPR, DOE based the TSLs on efficiency levels explored in the November 2007 ANOPR, and selected the TSLs on consideration of economic factors and current market conditions. ASAP suggested that DOE set TSLs based upon industry benchmarks such as current and forthcoming ENERGY STAR qualification levels and pending Federal tax incentive performance levels. (ASAP, Public Meeting Transcript, No. 40.5 at p. 33 and pp. 148–149) EIEA 2008 provided an Energy Efficient Appliance Credit to manufacturers for any RCW or CCW (front-loading or top-loading) produced domestically through 2010 with an efficiency level of at least 2.0 MEF/6.0 WF, or a larger credit for one that achieves 2.2 MEF/4.5 WF. The legislation also provides a separate tax credit for any top-loading RCW that achieves an efficiency level of at least 1.72 MEF/8.0 WF or a larger credit for one that exceeds 1.8 MEF/7.5 WF. DOE considered the impacts of these tax credits on the CCW industry in detail as part of the MIA. DOE accounts for the Federal tax credit as a direct cash benefit in the base and standards cases that increases the INPV. See section III.G of today's supplemental notice and appendix 13C of the SNOPR TSD for further discussion of this issue.

B. Proposed Standards for Commercial Clothes Washers

For the October 2008 NOPR, DOE made the preliminary determination that the standards for top-loading and front-loading CCWs listed in Table II.1 are technologically feasible and economically justified, and invited comment on these proposed standard levels.

In response, Alliance stated that it would likely exit the clothes washer market if standards based on a single CCW equipment class were enacted, which would result in domestic job losses, a CCW market disruption, and/or loss of competition in the CCW market. (Alliance, No. 45 at Attachment 2, pp. 6–12) Alliance and GE urged DOE to consider TSL 1 from the October 2008 NOPR (1.42 MEF/9.5 WF) as the appropriate standard for top-loading CCWs. (Alliance, Public Meeting Transcript, No. 40.5 at pp. 23–24; GE No. 48 at p. 5) Alliance believes that TSL 1 would result in energy savings while being technically feasible and economically justified. Alliance also stated standards at TSL 1 would avoid or lessen harm to Alliance and, hence,

reduce significant consumer impacts that would be associated with Alliance likely ceasing production. (Alliance, No. 45 at Attachment 2, p. 18)

GE opposed the top-loading standard proposed in the October 2008 NOPR due to small market size (1.3 percent) for coin-operated, top-loading CCWs and the potential 31-percent decrease in industry cash flows due to the proposed standards. GE commented that adoption of the standards would essentially regulate the top-loading equipment class out of the marketplace. GE also stated that the max-tech level for top-loading CCWs is not yet justified as being sustainable in the harsher consumer environment of laundromats, where units are subject to much tougher conditions such as overloading. GE agreed with Alliance's proposed standards for top-loaders of TSL 1 from the October 2008 NOPR (1.42 MEF/9.5 WF), which would also make the CCW WF consistent with the EISA 2007 standards for RCWs. (GE, Public Meeting Transcript, No. 40.5 at pp. 31–32; GE, No. 48 at pp. 4–5) MLA opposed the proposed October 2008 NOPR standard for top-loading CCWs, because there is currently no commercially acceptable top-loading CCW that can meet it. MLA believes the only way to comply with the top-loading CCW standard proposed in the October 2008 NOPR is to produce machines with poor washing and rinsing performance, high maintenance costs, and increased manufacturing costs. (MLA, No. 49 at pp.1 and 4)

Whirlpool commented that it supports both the proposed top-loading and front-loading standards in the October 2008 NOPR, though it acknowledged industry support is not consistent. Both standards, it said, are technologically feasible and enable substantial water and energy savings, although it agreed with DOE that front-loading CCWs can reach efficiency levels generally not attainable by top-loaders. Whirlpool stated that it has yet to field a top-loading CCW that can meet the proposed October 2008 NOPR standard, but that it believes technology exists to develop such equipment by early 2012 without violating intellectual property, provided that engineering and capital resources are available. (Whirlpool, Public Meeting Transcript, No. 40.5 at p. 28; Whirlpool, No. 50 at pp. 2–3) Whirlpool identified risks associated with the standards proposed in the October 2008 NOPR, including higher unit, capital, and development costs; lower reliability or perceived reliability due to the complexity of the technology needed to meet the standard; lack of market acceptance for lid locks on top-loading CCWs using spray rinse technology to meet the standard; and durability and resistance to breakage under overloading conditions. (Whirlpool, No. 50 at p. 3)

PG&E and EJ stated that adopting a single standard for all CCW classes would result in the largest potential savings for consumers. (EJ, Public Meeting Transcript, No. 40.5 at p. 200; PG&E, Public Meeting Transcript, No. 40.5 at p. 201) The Joint Comment suggested that a single standard based on efficiency achieved by front loaders available in the market today would achieve 32 percent more energy savings, 192 percent more water savings, and 78 percent more consumer savings in present value terms than the standards proposed in the October 2008 NOPR that treat top-loading and front-loading CCWs separately. (Joint Comment, No. 44 at p. 1)

ASAP commented that the previous analyses leading up to the October 2008 NOPR [the analyses in the November 2007 ANOPR] clearly indicated that there are tremendous life-cycle cost savings presented by high-efficiency CCWs, and those are available to all sectors of the market. ASAP believes that, for what appears to be a lack of a relatively small amount of capital, recognizing that amount of capital is significant for one manufacturer, hundreds of millions of dollars of consumer savings are going to be foregone. ASAP also commented that DOE did not substantiate its concerns about potential recapture of market share by less efficient top-loaders when reducing the proposed standard for front-loading CCWs from the level that would maximize life-cycle cost savings to the standards proposed in the October 2008 NOPR. (ASAP, Public Meeting Transcript, No. 40.5 at pp. 34–35)

In considering standards for today's supplemental notice, DOE first notes that it has retained separate equipment classes for top-loading and front-loading CCWs, for reasons discussed in section III.A. For top-loading CCW standards, DOE has revised its analysis due to a re-evaluation of the max-tech efficiency level, which resulted in the max-tech level from the October 2008 NOPR being eliminated from consideration as an efficiency level for today's supplemental notice (see section III.C.1.a.) DOE did not change the engineering analysis for front-loading CCWs from those presented in the October 2008 NOPR. DOE has thus evaluated standards for both equipment classes, including impacts to the consumer, manufacturer, and Nation, based on the analyses outlined in section III, and presents the approach and results for proposed standard levels for today's SNOPR in section V.

V. Analytical Results

A. Trial Standard Levels

DOE analyzed the benefits and burdens of a number of TSLs for the CCWs that are the subject of today's supplemental proposed rule. As discussed in section IV.A, for the October 2008 NOPR, DOE based the TSLs on efficiency levels explored in the November 2007 ANOPR, and selected the TSLs on consideration of economic factors and current market conditions. As also discussed previously in section III.C.1.a, DOE eliminated the maximum technologically efficiency level of 1.76 MEF/8.3 WF for the top-loading equipment class. Accordingly, for today's supplemental proposed rule, DOE modified the TSLs it considered for the October 2008 NOPR.

Table V.1 shows the TSLs for CCWs. TSLs consist of a combination of MEF and WF for each equipment class. In all, DOE has considered five TSLs. TSL 1 corresponds to the first candidate standard level from each equipment class and represents the efficiency level for each class with the least significant design change. TSL 2 represents the second candidate standard level for front-loading washers while keeping top-loading washers at its first candidate standard level. Over 96 percent of the front-loading CCW equipment Stock Keeping Units (SKUs) currently on the market either meets or exceeds the second candidate standard level for front-loading washers. In the case of the second candidate standard level for top-loading washers, a significant percent of the market, over 35 percent, also meets or exceeds this efficiency level. Therefore, TSL 2 corresponds to the candidate standard levels for each equipment class that still represent a significant share of the market. TSL 3 represents the second candidate standard level for top-loading washers (the maximum efficiency level for this class), and keeps front-loading washers at the second candidate standard level. For TSL 3, front-loading washers were held to the second candidate standard level in order to minimize the equipment price difference between the two equipment classes. For TSL 4, top-loading washers are retained at their maximum efficiency level while front-loading washers are incremented to their third candidate standard level. Finally, TSL 5 corresponds to the maximum technologically feasible level for each equipment class. In progressing

from TSL 1 to TSL 5, the LCC savings, NES, and NPV all increase. TSL 5 represents the level with the minimum LCC and maximum NES and NPV.

TABLE V.1—TRIAL STANDARD LEVELS FOR COMMERCIAL CLOTHES WASHERS

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Top-Loading:					
MEF	1.42	1.42	1.60	1.60	1.60
WF	9.5	9.5	8.5	8.5	8.5
Front-Loading:					
MEF	1.80	2.00	2.00	2.20	2.35
WF	7.5	5.5	5.5	5.1	4.4

B. Economic Justification and Energy Savings

1. Economic Impacts on Consumers

a. Life-Cycle Cost and Payback Period

To evaluate the net economic impact of standards on consumers, DOE conducted LCC and PBP analyses for each TSL. In general, higher efficiency equipment would affect consumers in two ways: (1) Annual operating expense would decrease; and (2) purchase price would increase. Section III.D of this notice discusses the inputs DOE used for calculating the LCC and PBP.

The key outputs of the LCC analysis are a mean LCC savings relative to the baseline equipment design, as well as a probability distribution or likelihood of LCC reduction or increase, for each TSL and equipment class. The LCC analysis also estimates the fraction of consumers for which the LCC will decrease (net benefit), increase (net cost), or exhibit no change (no impact) relative to the base-case equipment forecast. No impacts occur when the equipment efficiencies of the base-case forecast already equal or exceed the considered TSL efficiency.

Table V.2 and Table V.3 show the LCC and PBP results for both CCW equipment applications for the top-loading class while Table V.4 and Table V.5 show the LCC and PPB results for the front-loading equipment class. For example, in the case of the multi-family application for front-loading washers (Table V.4), TSL 2 (2.00 MEF/5.50 WF) shows an average LCC savings of $19. Note that for TSL 2, 96.3 percent of consumers in 2013 are assumed to already be using a front-loading CCW in the base case at TSL 2 and, thus, have zero savings due to the standard. If one compares the LCC of the baseline at 1.72 MEF/8.00 WF ($4220) to TSL 2 ($3690), then the difference in the LCCs is $530. However, since the base case includes a significant number of consumers that are not impacted by the standard, the average savings over all of the consumers is actually $19, not $530. DOE determined the median and average values of the PBPs shown below by excluding the percentage of households not impacted by the standard. For example, in the case of TSL 2 for front-loading washers in a multi-family application, 96.3 percent of the consumers did not factor into the calculation of the median and average PBP.

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Table V.2 Commercial Clothes Washers, Top-Loading, Multi-Family Application: Life-Cycle Cost and Payback Period Results

		Life-Cycle Cost			Life-Cycle Cost Savings				Payback Period (years)	
						Households with				
TSL	MEF/WF	Average Installed Price	Average Operating Cost	Average LCC	Average Savings	Net Cost	No Impact	Net Benefit	Median	Average
Baseline	1.26/9.50	$760	$3,263	$4,023	-	-	-	-	-	-
1, 2	1.42/9.50	$883	$3,153	$4,036	-$8.1	43.3%	35.3%	21.5%	11.7	17.3
3, 4, 5	1.60/8.50	$974	$2,873	$3,847	$178.6	13.8%	1.2%	85.0%	4.6	5.6

Table V.3 Commercial Clothes Washers, Top-Loading, Laundromat Application: Life-Cycle Cost and Payback Period Results

		Life-Cycle Cost			Life-Cycle Cost Savings				Payback Period (years)	
						Households with				
TSL	MEF/WF	Average Installed Price	Average Operating Cost	Average LCC	Average Savings	Net Cost	No Impact	Net Benefit	Median	Average
Baseline	1.26/9.50	$760	$3,422	$4,182	-	-	-	-	-	-
1, 2	1.42/9.50	$883	$3,326	$4,209	-$17.7	51.4%	35.3%	13.3%	7.9	9.1
3, 4, 5	1.60/8.50	$974	$3,025	$3,999	$190.0	2.9%	1.2%	95.9%	2.8	3.0

Table V.4 Commercial Clothes Washers, Front-Loading, Multi-Family Application: Life-Cycle Cost and Payback Period Results

		Life-Cycle Cost			Life-Cycle Cost Savings				Payback Period (years)	
						Households with				
TSL	MEF/WF	Average Installed Price	Average Operating Cost	Average LCC	Average Savings	Net Cost	No Impact	Net Benefit	Median	Average
Baseline	1.72/8.00	$1,365	$2,855	$4,220	-	-	-	-	-	-
1	1.80/7.50	$1,365	$2,855	$4,091	$4.7	0.0%	96.3%	3.7%	0.0	0.0
2, 3	2.00/5.50	$1,388	$2,726	$3,690	$19.5	0.0%	96.3%	3.7%	0.4	0.4
4	2.20/5.10	$1,428	$2,302	$3,596	$91.5	1.4%	23.1%	75.5%	3.0	3.2
5	2.35/4.40	$1,470	$2,168	$3,484	$202.7	1.1%	0.0%	98.9%	2.9	3.1

Table V.5 Commercial Clothes Washers, Front-Loading, Laundromat Application: Life-Cycle Cost and Payback Period Results

		Life-Cycle Cost			Life-Cycle Cost Savings				Payback Period (years)	
						Households with				
TSL	MEF/WF	Average Installed Price	Average Operating Cost	Average LCC	Average Savings	Net Cost	No Impact	Net Benefit	Median	Average
Baseline	1.72/8.00	$1,365	$2,014	$4,380	-	-	-	-	-	-
1	1.80/7.50	$1,365	$3,014	$4,240	$5.2	0.0%	96.3%	3.7%	0.0	0.0
2, 3	2.00/5.50	$1,388	$2,874	$3,787	$22.0	0.0%	96.3%	3.7%	0.2	0.2
4	2.20/5.10	$1,428	$2,400	$3,695	$93.4	0.0%	23.1%	76.9%	1.8	1.9
5	2.35/4.40	$1,470	$2,267	$3,572	$216.1	0.0%	0.0%	100.0%	1.6	1.7

b. Consumer Subgroup Analysis

Using the LCC spreadsheet model, DOE determined the impact of the standards on the following CCW consumer subgroups: small business owners and consumers without municipal water and sewer.

The results for consumers without municipal water and sewer indicate that the LCC impacts and payback periods for this subgroup are similar to the LCC impacts and payback periods on the full sample of CCW consumers. But for small business owners, the LCC impacts and payback periods are different from those associated with the general population. For the top-loading equipment class, Table V.6 and Table V.7 show the LCC impacts and payback periods for small multi-family property owners and small laundromats, respectively, while Table V.8 and Table V.9 show the same but for the front-loading equipment class. For all TSLs for both equipment classes, both sets of small business owners, on average, realize LCC savings similar to the general population. The difference between the small business population and the general population occurs in the percentage of each population that realizes LCC savings from standards. With the exception of TSL 1 for top-loading washers, an overwhelming majority of the small business and general populations benefit from standards at each TSL. But for both equipment classes, a larger percentage of the general population benefits from standards than small business owners. This occurs because small businesses do not have the same access to capital as larger businesses. As a result, smaller businesses have a higher average discount rate than the industry average. Because of the higher discount rates, smaller businesses do not value future operating costs savings from more efficient CCWs as much as the general population. But to emphasize, in spite of the higher discount rates, a majority of small businesses still benefit from higher CCW standards at all TSLs, with the exception of TSL 1 for the top-loading equipment class.

Table V.6 Commercial Clothes Washers, Top-Loading, Multi-Family Application: Life-Cycle Cost and Payback Period Results for Small Business Owners

		Life-Cycle Cost			Life-Cycle Cost Savings				Payback Period (years)	
						Households with				
TSL	MEF/WF	Average Installed Price	Average Operating Cost	Average LCC	Average Savings	Net Cost	No Impact	Net Benefit	Median	Average
Baseline	1.26/9.50	$760	$2,659	$3,419						
1, 2	1.42/9.50	$883	$2,569	$3,452	-$22.0	50.7%	35.6%	13.7%	11.7	17.7
3, 4, 5	1.60/8.50	$974	$2,341	$3,315	$112.6	21.2%	1.5%	77.4%	4.5	5.6

Table V.7 Commercial Clothes Washers, Top-Loading, Laundromat Application: Life-Cycle Cost and Payback Period Results for Small Business Owners

		Life-Cycle Cost			Life-Cycle Cost Savings				Payback Period (years)	
						Households with				
TSL	MEF/WF	Average Installed Price	Average Operating Cost	Average LCC	Average Savings	Net Cost	No Impact	Net Benefit	Median	Average
Baseline	1.26/9.50	$760	$2,963	$3,723						
1, 2	1.42/9.50	$883	$2,880	$3,764	-$26.1	58.6%	35.6%	5.8%	7.8	9.2
3, 4, 5	1.60/8.50	$974	$2,620	$3,594	$140.9	5.6%	1.5%	92.9%	2.8	3.0

Table V.8 Commercial Clothes Washers, Front-Loading, Multi-Family Application: Life-Cycle Cost and Payback Period Results for Small Business Owners

		Life-Cycle Cost			Life-Cycle Cost Savings				Payback Period (years)	
						Households with				
TSL	MEF/WF	Average Installed Price	Average Operating Cost	Average LCC	Average Savings	Net Cost	No Impact	Net Benefit	Median	Average
Baseline	1.72/8.00	$1,365	$2,327	$3,693						
1	1.80/7.50	$1,365	$2,327	$3,587	$3.7	0.0%	96.4%	3.6%	0.0	0.0
2, 3	2.00/5.50	$1,388	$2,222	$3,265	$14.9	0.0%	96.4%	3.6%	0.4	0.5
4	2.20/5.10	$1,428	$1,877	$3,196	$69.1	4.1%	22.2%	73.7%	3.0	3.2
5	2.35/4.40	$1,470	$1,768	$3,113	$151.7	4.2%	0.0%	95.8%	2.9	3.1

Table V.9 Commercial Clothes Washers, Front-Loading, Laundromat Application: Life-Cycle Cost and Payback Period Results for Small Business Owners

		Life-Cycle Cost			Life-Cycle Cost Savings				Payback Period (years)	
						Households with				
TSL	MEF/WF	Average Installed Price	Average Operating Cost	Average LCC	Average Savings	Net Cost	No Impact	Net Benefit	Median	Average
Baseline	1.72/8.00	$1,365	$1,643	$3,977						
1	1.80/7.50	$1,365	$2,611	$3,855	$4.2	0.0%	96.4%	3.6%	0.0	0.0
2, 3	2.00/5.50	$1,388	$2,490	$3,467	$17.6	0.0%	96.4%	3.6%	0.2	0.2
4	2.20/5.10	$1,428	$2,079	$3,392	$75.9	0.0%	22.2%	77.7%	1.8	1.9
5	2.35/4.40	$1,470	$1,964	$3,291	$176.4	0.0%	0.0%	100.0%	1.6	1.7

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c. Rebuttable-Presumption Payback

As discussed above, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for equipment that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C. 6295(o)(2)(B)(iii)) DOE calculated a rebuttable-presumption payback period for each TSL to determine whether DOE could presume that a standard at that level is economically justified. Table V.10 shows the rebuttable-presumption payback periods for CCWs. Because only a single, average value is necessary for establishing the rebuttable-presumption payback period, rather than using distributions for input values, DOE used discrete values. As required by EPCA, DOE based the

calculation on the assumptions in the DOE test procedures for CCWs. (42 U.S.C. 6295(o)(2)(B)(iii)) As a result, DOE calculated a single rebuttable-presumption payback value, and not a distribution of payback periods, for each TSL.

TABLE V.10—REBUTTABLE-PRESUMPTION PAYBACK PERIODS FOR COMMERCIAL CLOTHES WASHERS

TSL	Payback period, *years*			
	Top-loading		Front-loading	
	Multi-family application	Laundromat application	Multi-family application	Laundromat application
1	>100	>100	0	0
2	>100	>100	1.2	1.3
3	24.0	>100	1.2	1.3
4	24.0	>100	9.4	17.3
5	24.0	>100	10.0	17.6

With the exception of TSLs 1 to 3 for front-loading CCWs, the TSLs in Table V.10 do not have rebuttable-presumption payback periods of less than 3 years. As stated above, in addition to calculating the rebuttable-presumption payback period DOE routinely conducts a thorough economic analysis that considers the full range of impacts, including those to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this full analysis serve as the basis for DOE to definitively determine the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). Section V.C provides a complete discussion of how DOE considered the range of impacts to select the standards proposed in today's SNOPR.

2. Economic Impacts on Manufacturers

For the October 2008 NOPR, DOE used the INPV in the MIA to compare the financial impacts of different TSLs on CCW manufacturers. 73 FR 62034, 62099–104 (Oct. 17, 2008). The INPV is the sum of all net cash flows discounted by the industry's cost of capital (discount rate). DOE used the GRIM to compare the INPV of the base case (no new energy conservation standards) to that of each TSL for the CCW industry. To evaluate the range of cash-flow impacts on the CCW industry, DOE constructed different scenarios using different assumptions for shipments that correspond to the range of anticipated market responses. Each scenario results in a unique set of cash flows and corresponding industry value at each TSL. These steps allowed DOE to compare the potential impacts on the industry as a function of TSLs in the GRIM. The difference in INPV between the base case and the standards case is an estimate of the economic impacts that implementing that standard level would have on the entire industry. For today's supplemental notice, DOE continues to use the above methodology and presents the results in the subsequent sections. See chapter 13 for additional information on MIA methodology and results.

a. Industry Cash-Flow Analysis Results

The major source of uncertainty voiced by all manufacturers during MIA interviews is the impact of higher standards on the number of CCWs sold. Future equipment sales are particularly important considering the high capital costs (particularly design, tooling, and product verification costs) on the basis of the low volumes of equipment sold. In light of the concern over future shipments, DOE modeled two MIA scenarios, based on two shipment projections from the NIA.

To assess the lower end of the range of the potential impacts on the CCW industry, DOE considered a scenario in which total CCW shipments will not be negatively impacted at higher energy conservation standards; this scenario is called the base-case shipments scenario. To assess the higher end of the range of potential impacts for the CCW industry, DOE considered a scenario in which total industry shipments would decrease due to the combined effects of increases in purchase price and decreases in operating costs due to new energy conservation standards; this scenario is called the price elasticity of demand scenario. In both scenarios, it is assumed that manufacturers will be able maintain the same gross margins (as a percentage of revenues) that are currently obtained in the base case.

As discussed in section III.G of today's supplemental notice, DOE also considered the impact of Federal production tax credits on the CCW industry. DOE does not include the benefit of these tax credits in its results shown below. DOE includes these results in appendix 13C of the TSD. DOE estimated that the total benefit of these Federal production tax credits to the CCW industry from 2007 through 2010 would be approximately $4.1 million. Because DOE discounts the industry cash flows to the 2009 base year, in this scenario the base case INPV increases by approximately $400,000 if the benefit from the Federal production tax credits are included. As previously stated, although the base-case and standards-case INPV increase as a result of Federal production tax credits, the benefits do not significantly mitigate possible impacts due to standards. For additional information on the assumptions and calculations of Federal production tax credits for CCWs, see appendix 13C of the TSD.

Table V.11 and Table V.12 show the MIA results for each TSL using both shipment scenarios described above for CCW manufacturers.

Table V.11 Manufacturer Impact Analysis for Commercial Clothes Washers with Base-Case Shipments (Not Including DOE's Estimates of Federal Production Tax Credits)

Preservation of Gross Margin Percentage Markup with Base-Case Shipments							
	Units	Base Case	Trial Standard Level				
			1	2	3	4	5
INPV	(2008$ millions)	62	65	63	57	54	41
Change in INPV	(2008$ millions)*	-	4	1	(5)	(8)	(20)
	(%)	-	5.97%	2.24%	-7.81%	-12.73%	-33.09%
Amended Energy Conservation Standards Equipment Conversion Expenses	(2008$ millions)	-	0.00	3.12	18.72	22.56	35.87
Amended Energy Conservation Standards Capital Investments	(2008$ millions)	-	0.00	0.62	1.66	2.44	5.09
Total Investment Required	(2008$ millions)	-	0.0	3.7	20.4	25.0	41.0

*Parentheses indicate negative (-) values

Table V.12 Manufacturer Impact Analysis for Commercial Clothes Washers with Price Elasticity of Demand Shipments (Not Including DOE's Estimates of Federal Production Tax Credits)

Preservation of Gross Margin Percentage Markup with Price Elasticity of Demand Shipments							
	Units	Base Case	Trial Standard Level				
			1	2	3	4	5
INPV	(2008$ millions)	62	64	62	55	51	39
Change in INPV	(2008$ millions)*	-	2.8	0.5	(7.0)	(10.2)	(23.0)
	(%)	-	4.50%	0.76%	-11.39%	-16.57%	-37.30%
Amended Energy Conservation Standards Equipment Conversion Expenses	(2008$ millions)	-	0.00	3.12	18.72	22.56	35.87
Amended Energy Conservation Standards Capital Investments	(2008$ millions)	-	0.00	0.62	1.66	2.44	5.09
Total Investment Required	(2008$ millions)	-	0.0	3.7	20.4	25.0	41.0

*Parentheses indicate negative (-) values

At TSL 1, the impact on INPV and cash flow varies depending on the manufacturers' ability to maintain revenues as shipments decrease due to the price elasticity. DOE estimated the impacts in INPV at TSL 1 to range from positive $3.7 million to positive $2.8 million, or a change in INPV of 5.97 percent to 4.50 percent. At this level, the industry cash flow does not decrease from the base-case value of $3.8 million in the year leading up to the standards. Since all manufacturers currently make or source top-loading and front-loading CCWs with efficiency levels above this level, DOE assumed that there would be no equipment or capital conversion costs.

At TSL 2, DOE estimated the impacts in INPV to range from positive $1.4 million to positive $0.5 million, or a change in INPV of 2.24 percent to 0.76 percent. At this level, the industry cash flow decreases by approximately 27.7 percent, to $2.8 million, compared to the base-case value of $3.8 million in the year leading up to the standards. Since all manufacturers of top-loading washers already sell equipment that exceeds the efficiency requirements proposed at this TSL, DOE assumed that there would be no equipment or capital conversion costs for top-loading washers at this TSL. Over 95 percent of all currently-sold front-loading CCW SKUs have efficiency levels that achieve or exceed this level and all manufacturers sell front-loading washers that achieve or exceed this level. Accordingly, DOE estimated that the industry would incur relatively small equipment and capital conversion costs at this TSL.

At TSL 3, DOE estimated the impacts in INPV to range from −$4.8 million to −$7.0 million, or a change in INPV of −7.81 percent to −11.39 percent. At this level, the industry cash flow decreases by approximately 158 percent, to −$2.2 million, compared to the base case value of $3.8 million in the year leading up to the standards. Only one manufacturer currently markets a single top-loading CCW SKU at this TSL. DOE estimates that at least one manufacturer will need to redesign and retool a line of top-loading CCWs to meet the efficiency requirements of TSL 3. For top-loading CCWs, multiple manufacturers stated that customers could see a reduction in wash quality or reject new designs based on a perceived reduction in wash quality or rinse performance at TSL 3. Over 95 percent of currently-sold front-loading CCW SKUs have efficiency ratings that meet or exceed this level. Hence, DOE estimated relatively small equipment and capital conversion costs for these washers.

At TSL 4, DOE estimated the impacts in INPV at TSL 4 to range from −$7.8 million to −$10.2 million, or a change in INPV of −12.73 percent to −16.57 percent. At this level, the industry cash flow decreases by approximately 206 percent, to −$4.1 million, compared to the base-case value of $3.8 million in the year leading up to the standards. As with TSL 3, the top-loading standard remains at max-tech at TSL 4, and the impacts previously stated for this equipment class remain. Currently, 77 percent of front-loading washers shipped do not meet TSL 4, resulting in multiple manufacturers having to redesign existing front-loading equipment to conform cost-effectively to the standard. The $8.4 million in equipment and capital conversion costs estimated for this TSL to redesign and retool for the front-loading standard, while not appearing substantial on a nominal basis, are significant for manufacturers due to low volumes of front-loading washers. Adjusting for shipment volumes, investing $8.4 million in front-loading washers is equivalent to investing over $18.5

million in top-loading washers. These investment costs are also high compared to the industry value of $29 million for front-loading washers. Consequently, it could be difficult for manufacturers to justify the investments necessary to reach TSL 4 for front-loading washers.

At TSL 5, DOE estimated the impacts in INPV to range from −$20.4 million to −$23.0 million, or a change in INPV of −33.09 percent to −37.30 percent. At this level, the industry cash flow decreases by approximately 371 percent, to −$10.3 million, compared to the base-case value of $3.8 million in the year leading up to the standards. The top-loading standard remains at max-tech at TSL 5. DOE estimates for TSL 5 that manufacturers would have to invest $24.4 million in front-loading washer in an industry valued at $29 million. It likely would be difficult for manufacturers to justify the investments necessary to reach max-tech for both top-loading and front-loading washers.

b. Impacts on Employment

To quantitatively assess the impacts of energy conservation standards on CCW manufacturing employment, DOE used the GRIM to estimate the domestic labor expenditures and number of employees in the base case and at each TSL from 2009 through 2043 for the CCW industry. DOE used statistical data from the U.S. Census Bureau's 2006 *Annual Survey of Manufactures*[36] (*2006 ASM*) and 2006 *Current Industry Report*[37] (*2006 CIR*), the results of the engineering analysis, and interviews with manufacturers to estimate the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels. Labor expenditures are a function of the labor intensity of the equipment, the sales volume, and an implicit assumption that wages remain fixed in real terms over time. DOE notes that the MIA's analysis detailing impacts on employment focuses specifically on the production workers manufacturing the covered products or equipment, rather than a manufacturer's broader operations. Thus, the estimated number of impacted employees in the MIA is separate and distinct from the total number of employees used to determine whether a manufacturer is a small business for purposes of analysis under the Regulatory Flexibility Act.

The estimates of production workers in this section only cover workers up to and including the line-supervisor level that are directly involved in fabricating and assembling equipment within the original equipment manufacturer (OEM) facility. In addition, workers that perform services that are closely associated with production operations are included. Employees above the working-supervisor level are excluded from the count of production workers. Thus, the labor associated with non-production functions (*e.g.,* advertisement, sales) is explicitly not covered.[38] In addition, DOE's estimates only account for production workers that manufacture the specific equipment covered by this rulemaking. For example, a worker on a clothes dryer production line would not be included in the estimate of the number of CCW production workers. Finally, this analysis also does not factor in the dependence by some manufacturers on production volume to make their operations viable. For example, should a major line of business cease to operate or move to a geographic region, a production facility may no longer have the manufacturing scale to obtain volume discounts on its purchases nor be able to justify maintaining major capital equipment. Thus, the impact on a manufacturing facility due to a line closure may affect more employees than just the production workers, but again this analysis focuses on the production workers directly impacted.

Using the GRIM, DOE calculates that there are 188 U.S. production workers in the CCW industry. Using the *CIR* data, DOE estimates that approximately 81 percent of CCWs sold in the United States are manufactured domestically. Today's supplemental notice estimates the impacts on U.S. production workers in the CCW industry impacted by energy conservation standards as shown in Table V.13.

TABLE V.13—CHANGE IN TOTAL NUMBER OF DOMESTIC PRODUCTION EMPLOYEES IN 2012 IN THE COMMERCIAL CLOTHES WASHER INDUSTRY

	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Total Number of Domestic Production Workers in 2012	188	204	204	222	224	228
Change in Total Number of Domestic Production Workers in 2012		16	16	33	36	40

DOE expects that there would be positive employment impacts among domestic CCW manufacturers for TSL 1 through TSL 5. Because production employment expenditures are assumed to be a fixed percentage of COGS and the MPCs increase with more efficient equipment, labor tracks the increased prices in the GRIM. The GRIM predicts a steady level of domestic employment after standards at a level based on the increase in relative price.

DOE reached this conclusion independent of the employment impacts from the broader U.S. economy, which are documented in chapter 15 of the TSD accompanying this notice. The employment conclusions do not account for the possible relocation of domestic jobs to lower-labor-cost countries because the potential relocation of U.S. jobs is uncertain and highly speculative. The GRIM shows the employment levels rising at higher TSLs. If all standards-compliant CCWs are produced in the United States, the employment levels would be expected to be reasonably accurate, as more efficient washers are more complex and require more labor.

The actual impacts on domestic employment after standards depend on whether any U.S. manufacturer decided to shift more U.S. production to lower-cost countries. Due to the uncertainty in the business decisions of where to manufacture washers after standards, DOE presents a range of potential employment impacts if the potential for relocation is considered. Today's proposed standards could result in adding 33 production workers (if all manufacturers continue to produce washers in their existing U.S. facilities) to losing 188 production workers (if all

[36] The 2006 *Annual Survey of Manufactures* is available online at: *http://www.census.gov/mcd/asmhome.html.*

[37] The 2006 *Current Industry Report* is available online at: *http://www.census.gov/cir/www/alpha.html.*

[38] The 2006 *ASM* provides the following definition: ''The 'production workers' number includes workers (up through the line-supervisor level) engaged in fabricating, processing, assembling, inspecting, receiving, storing, handling, packing, warehousing, shipping (but not delivering), maintenance, repair, janitorial and guard services, product development, auxiliary production for plant's own use (*e.g.,* power plant), recordkeeping, and other services closely associated with these production operations at the establishment covered by the report. Employees above the working-supervisor level are excluded from this item.''

U.S. manufacturers source or shift standards-compliant washers production abroad).

Based on the CCW revenues reported in appendix 13A and using the employment assumptions in section III.H, DOE estimates there are approximately 150 production workers at the LVM manufacturing equipment directly covered by this rulemaking. DOE estimates that there are an additional 20 non-production employees attributable to CCWs at the facility. The domestic facility also manufactures residential top-loading washers, standard dryers, front-loading residential washers, washer-extractors, and tumbler dryers. If the LVM decided to no longer produce any soft-mount washers or standard dryers at the facility because it could not sell dryers without selling washers, approximately 292 production and 40 non-production jobs would be lost. Including all production workers involved in covered and non-covered equipment, the closure of the LVM domestic manufacturing plant would equate to a loss of approximately 600 factory employees.

A further discussion of the LVM and the potential impacts of relocation on employment for the CCW industry at other TSLs are presented in chapter 13 of the TSD.

c. Impacts on Manufacturing Capacity

According to the majority of CCW manufacturers, new energy conservation standards could potentially impact manufacturers' production capacity depending on the efficiency level required. Necessary redesigns of front-loading and top-loading CCWs will not change the fundamental assembly of the equipment or cause a drastic increase in the volume requirements of front-loading washers. Thus, DOE believes manufacturers will be able to maintain manufacturing capacity levels and continue to meet market demand under new energy conservation standards as long as manufacturers continue to offer top-loading and front-loading washers.

However, a very high efficiency standard for top-loading clothes washers could potentially cause one or more manufacturer(s) to abandon further manufacture of top-loading clothes washers after the effective date (due to concerns about wash quality, for example). Instead of manufacturing top-loading clothes washers, manufacturers could elect to switch their entire production over to front-loading clothes washers. Since top-loading and front-loading clothes washers share few, if any parts, are built on completely separate assembly lines, and are built at very different production volumes, a manufacturer may not be able to make a platform switch from top-loading to front-loading washers without significant impacts on equipment development and capital expenses, along with capacity constraints. However, DOE believes that the energy conservation standard proposed in today's supplemental notice for top-loading CCWs mitigates much of that risk.

Multiple manufacturers stated during interviews that front-loading CCWs represent a relatively small segment of their total production volumes. Depending on the manufacturer, front-loading production capacity may need to be substantially expanded to meet the demand that top-loading production lines currently meet. This expansion could possibly affect capacity until new production lines come on-line to service demand. In addition, manufacturers stated that the higher prices of front-loading washers could lead to a decrease in shipments. This could lead to a permanently lower production capacity as machines are repaired and the equipment lifetime of existing washers is extended. DOE research suggests that the proposed efficiency standards can be achieved by all manufacturers using existing platforms and technologies; hence, there appears little reason for the market to wholly transition to front-loading CCWs.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash flow estimate is not adequate for assessing differential impacts among subgroups of manufacturers. Lower-volume manufacturers, niche players, or manufacturers exhibiting a cost structure that differs significantly from the industry average could be affected differently than their competitors. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics.

As outlined earlier, an LVM that concentrates on building laundry equipment will be affected disproportionately by any energy efficiency regulation regarding CCWs. This business is focused on the commercial laundry market segment and its total production volume is many times lower than its diversified competitors. Due to this combination of market concentration and size, it is at risk of material harm to its business, depending on the TSL chosen.

The LVM indicated that it could not manufacture top-loading CCWs above an MEF of 1.42 (TSL 1). If DOE sets a standard above TSL 1, the LVM would be forced to design a new top-loading washer, offer only front-loading washers, or choose to exit the CCW market altogether. Due to its small size, the investment required for the LVM to design a more efficient top-loading washer would put the company at a competitive disadvantage. If the LVM no longer were to offer a top-loading washer and would have to expand its front-loading production lines, it would likely cease CCW production altogether, resulting in significant impacts to the industry. Currently, the LVM's top-loading washers account for 70 percent of its CCW shipments. Shifting all top-loading CCWs to front-loading washers at current production volumes would require substantial investments that the company may not be able to justify. In addition, the LVM historically derived over 85 percent of its total clothes washer revenue from CCWs, so its sales in the RCW market would be too low to justify continuing any top-loading clothes washer manufacturing. While the LVM currently manufactures a front-loading clothes washer, it does so at a cost disadvantage compared to its competitors. The potential investment and risk required to develop a cost-competitive clothes washer that deviates significantly from its traditional top-loader agitator design could be too great for the LVM's current owners. The LVM could decide to exit the market rather than take this risk, which could cause employment impacts in the CCW industry. As stated in section III.G, DOE reevaluated the CCW energy conservation standards proposed in the October 2008 NOPR in response to comments received from interested parties. DOE believes that the energy conservation standards proposed in today' supplemental notice greatly lessens the potential disadvantages faced by the LVM. Further details of the separate analysis of the impacts on the LVM are found in chapter 13 of the TSD accompanying this supplemental notice.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings through 2043 that would be expected to result from amended energy conservation standards, DOE compared the energy consumption of equipment under the base case to energy consumption of this equipment under the TSLs. Table V.14 shows the forecasted national energy savings at each TSL for CCWs. Summing the energy savings for all equipment classes across each TSL considered in this rulemaking would result in significant energy and water savings, with the

amount of savings increasing with higher efficiency standards. Chapter 11 of the TSD accompanying this supplemental notice provides additional details on the NES values reported below, as well as discounted NES results (and discounted national water savings results) based on discount rates of 3 and 7 percent. DOE reports both undiscounted and discounted values of energy savings. Discounted energy savings represent a policy perspective wherein energy savings farther in the future are less significant than energy savings closer to the present.[39]

TABLE V.14—SUMMARY OF CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR COMMERCIAL CLOTHES WASHERS

TSL	Top-loading		Front-loading		Total	
	National energy savings (quads)	National water savings (trillion gallons)	National energy savings (quads)	National water savings (trillion gallons)	National energy savings (quads)	National water savings (trillion gallons)
1	0.04	0.00	0.00	0.00	0.04	0.00
2	0.04	0.00	0.00	0.01	0.04	0.01
3	0.10	0.14	0.00	0.01	0.10	0.14
4	0.10	0.14	0.01	0.03	0.11	0.16
5	0.10	0.14	0.02	0.07	0.12	0.21

b. Net Present Value

The NPV analysis is a measure of the cumulative benefit or cost of energy conservation standards to the Nation. In accordance with the OMB's guidelines on regulatory analysis (OMB Circular A–4, section E, Sept. 17, 2003), DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy, and reflects the returns on real estate and small business capital as well as corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, since recent OMB analysis has found the average rate of return to capital to be near this rate. DOE also used the 3-percent rate to capture the potential effects of standards on private consumption (*e.g.,* through higher prices for equipment and the purchase of reduced amounts of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*i.e.,* yield on Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the last 30 years. Table V.15 shows the forecasted NPV at each TSL for CCWs.

TABLE V.15—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR COMMERCIAL CLOTHES WASHERS

[Impacts for units sold from 2013 to 2043]

TSL	NPV (billion 2008$)					7% Discount rate
	Top-loading		Front-loading		Total	
	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate		
1	0.01	0.07	0.00	0.01	0.01	0.08
2	0.01	0.07	0.01	0.03	0.02	0.10
3	0.34	0.86	0.01	0.03	0.36	0.89
4	0.34	0.86	0.07	0.17	0.41	1.03
5	0.34	0.86	0.17	0.39	0.51	1.25

c. Impacts on Employment

In addition to considering the direct employment impacts for the manufacturers of equipment covered by this rulemaking (discussed above), DOE develops estimates of the indirect employment impacts of proposed standards in the economy in general. As noted previously, DOE expects energy conservation standards for equipment subject of this rulemaking to reduce energy bills for consumers, with the resulting net savings being redirected to other forms of economic activity. DOE also realizes that these shifts in spending and economic activity could affect the demand for labor. To estimate these effects, DOE used an input/output model of the U.S. economy using BLS data (described in section III.H). (See the TSD accompanying this supplemental notice, chapter 15.)

This input/output model suggests today's proposed standards are likely to slightly increase the net demand for labor in the economy. Neither the BLS data nor the input/output model DOE uses includes the quality or wage level of the jobs. As Table V.16 shows, DOE estimates that net indirect employment impacts from today's proposed standards are likely to be small. The net increase in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment.

[39] Consistent with Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), DOE follows the guidance of OMB regarding methodologies and procedures for regulatory impact analysis that affect more than one agency. In reporting energy and environmental benefits from energy conservation standards, DOE will report both discounted and undiscounted (*i.e.,* zero discount-rate) values.

TABLE V.16—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT AT COMMERCIAL CLOTHES WASHER MANUFACTURERS

TSL	Net national change in jobs in 2043 (thousands)
1	0.07
2	0.08
3	0.46
4	0.52
5	0.62

4. Impact on Utility or Performance of Equipment

For the reasons stated above in section II.G.1.d, DOE believes that for purposes of 42 U.S.C. 6295(o)(2)(B)(i)(IV), none of the efficiency levels considered in this notice reduces the utility or performance of equipment under consideration in this rulemaking.

5. Impact of Any Lessening of Competition

In weighing the promulgation of any proposed standards, DOE is required to consider any lessening of competition that is likely to result from the adoption of those standards. The determination of the likely competitive impacts stemming from a proposed standard is made by the Attorney General, who transmits this determination, along with an analysis of the nature and extent of the impact, to the Secretary of Energy. (See 42 U.S.C. 6295(o)(2)(B)(i)(VI) and (B)(ii).)

DOE carefully considered the determination received from DOJ in response to the October 2008 NOPR, and accordingly chose efficiency levels for this SNOPR that appear achievable by all CCW manufacturers using existing equipment platforms and technologies. As such, there should be minimal impact on the CCW market and hence its manufacturers. To assist the Attorney General in making a determination for this SNOPR, DOE has provided DOJ with copies of this notice and the TSD for review. DOE will consider DOJ's comments on today's SNOPR in preparing the final rule.

DOE notes that if, based on the public comments received and its further consideration of this issue, it were to establish a single equipment class in setting standards for CCWs, DOE intends to give considerable weight to the potential adverse effects of a single equipment class efficiency standard on competition in the CCW market. That is, DOE does not intend to set a standard that produced significant adverse impacts on competition in this market.

6. Need of the Nation To Conserve Energy

Improving the energy efficiency of CCWs, where economically justified, would likely improve the security of the Nation's energy system by reducing overall demand for energy. Reduced electricity demand may also improve the reliability of the electricity system. As a measure of this reduced demand, DOE expects the energy savings from the adopted standards to eliminate the need for approximately 0.010 gigawatts (GW) of generating capacity by 2043.

Enhanced energy savings from higher standards for CCWs also produces environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production, and with building use of fossil fuels at sites where CCWs are used. Table V.17 provides DOE's estimate of cumulative CO_2, NO_X, and Hg emissions reductions that would result from the TSLs considered in this rulemaking. The expected energy savings from new standards for CCWs may also reduce the cost of maintaining nationwide emissions standards and constraints. In the environmental assessment (chapter 16 of the TSD accompanying this supplemental notice), DOE reports estimated annual changes in CO_2, NO_X, and Hg emissions attributable to each TSL.

TABLE V.17—SUMMARY OF EMISSIONS REDUCTIONS FOR COMMERCIAL CLOTHES WASHERS

[Cumulative for Equipment Sold from 2013 to 2043]

Emissions	TSL				
	1	2	3	4	5
CO_2 *(Mt)*	2.36	2.39	5.07	5.66	6.11
NO_X *(kt)*	1.43	1.45	3.04	3.39	3.66
Hg *(t)*	0–0.01	0–0.01	0–0.03	0–0.03	0–0.03

Mt = million metric tons.
kt = thousand metric tons.
t = metric tons.

As discussed in section III.J of this supplemental notice, DOE does not report SO_2 emissions reductions from power plants because reductions from an energy conservation standard would not affect the overall level of SO_2 emissions in the United States due to the emissions caps for SO_2.

NO_X emissions from 28 eastern States and D.C. are limited under CAIR, Although CAIR has been remanded to EPA by the D.C. Circuit, it will remain in effect until it is replaced by a rule consistent with the Court's December 23, 2008, opinion in *North Carolina v. EPA.* North Carolina v. EPA, 550 F.3d 1176 (D.C. Cir. 2008). Because all States covered by CAIR opted to reduce NO_X emissions through participation in cap and trade programs for electric generating units, emissions from these sources are capped across the CAIR region.

For the 28 eastern States and D.C. where CAIR is in effect, no NO_X emissions reductions will occur due to the permanent cap. Under caps, physical emissions reductions in those States would not result from the energy conservation standards under consideration by DOE, but standards might have produced an environmentally related economic impact in the form of lower prices for emissions allowance credits, if large enough. However, DOE determined that in the present case, such standards would not produce an environmentally related economic impact in the form of lower prices for emissions allowance credits, because the estimated reduction in NO_X emissions or the corresponding allowance credits in States covered by the CAIR cap would be too small to affect allowance prices for NO_X under the CAIR. In contrast, new or amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by CAIR. As a result, the NEMS–BT does forecast NO_X emissions reductions from energy sources in those 22 States from the CCW standards considered in today's SNOPR.

In the October 2008 NOPR, however, DOE provided a different estimate of NO_X reductions because DOE assumed that the CAIR rule had been vacated. This is because the CAIR rule was vacated by the D.C. Circuit in its July 11, 2008 decision in *North Carolina* v. *Environmental Protection Agency.* 531 F.3d 896 (D.C. Cir. 2008). As noted above, the D.C. Circuit, in a December 23, 2008, opinion, decided to allow the CAIR rule to remain in effect until it is replaced by a rule consistent with the court's earlier opinion, but this decision came well after the publish date of the October 2008 NOPR..Thus, for the October 2008 NOPR, DOE established a range of NO_X reductions based on low and high emission rates (in kt of NO_X emitted per TWh of electricity generated) derived from the *AEO 2008.* DOE anticipated that, in the absence of the CAIR's trading program, the new or amended conservation standards would reduce NO_X emissions nationwide, not just in 22 States.

As noted in section III.J, DOE was able to estimate the changes in Hg emissions associated with an energy conservation standard as follows. DOE notes that the NEMS–BT model used as an integral part of today's rulemaking does not estimate Hg emissions reductions due to new energy conservation standards, as it assumed that Hg emissions would be subject to EPA's CAMR. 70 FR 28606 (May 18, 2005). CAMR would have permanently capped emissions of mercury for new and existing coal-fired plants in all States by 2010. As with SO_2 and NO_X, DOE assumed that under such a system, energy conservation standards would have resulted in no physical effect on these emissions, but might have resulted in an environmentally related economic benefit in the form of a lower price for emissions allowance credits if those credits were large enough. DOE estimated that the change in the Hg emissions from energy conservation standards would not be large enough to influence allowance prices under CAMR.

On February 8, 2008, the D.C. Circuit issued its decision in *New Jersey* v. *Environmental Protection Agency* to vacate CAMR. 517 F.3d 574 (D.C. Cir. 2008). In light of this development and because the NEMS–BT model could not be used to directly calculate Hg emissions reductions, DOE used the Hg emission rates discussed below to calculate emissions reductions in the October 2008 NOPR. This same methodology is used for today's SNOPR as well due to the continued fluid environment ''* * * with many States planning to enact new laws or make existing laws more stringent.'' EIA *AEO 2009* (March 2009), p. 18. The NEMS–BT has only rough estimates of Hg emissions, and it was felt that the range of emissions used in the NOPR remain appropriate given these circumstances.

Therefore, rather than using the NEMS–BT model, DOE established a range of Hg rates to estimate the Hg emissions that could be reduced through standards. DOE's low estimate assumed that future standards would displace electrical generation only from natural gas-fired power plants, thereby resulting in an effective emission rate of zero. (Under this scenario, coal-fired power plant generation would remain unaffected.) The low-end emission rate is zero because natural gas-fired power plants have virtually zero Hg emissions associated with their operation.

DOE's high estimate, which assumed that standards would displace only coal-fired power plants, was based on a nationwide Hg emission rate from *AEO 2008* for the October 2008 NOPR. (Under this scenario, gas-fired power plant generation would remain unaffected and that no future reductions in the rate of Hg emissions from such sources would occur.) Because power plant emission rates are a function of local regulation, scrubbers, and the Hg content of coal, it is extremely difficult to identify a precise high-end emission rate. Therefore, the most reasonable estimate is based on the assumption that all displaced coal generation would have been emitting at the average emission rate for coal generation as specified by the April update to *AEO 2009.* As noted previously, because virtually all Hg emitted from electricity generation is from coal-fired power plants, DOE based the emission rate on the tons of Hg emitted per TWh of coal-generated electricity. Based on the emission rate for 2006, DOE derived a high-end emission rate of 0.0255 tons per TWh. To estimate the reduction in Hg emissions, DOE multiplied the emission rate by the reduction in coal-generated electricity due to the standards considered in the utility impact analysis. These changes in Hg emissions are extremely small, ranging from 0.03 to 0.27 percent of the national base-case emissions forecast by NEMS–BT, depending on the TSL.

In the October 2008 NOPR, DOE proposed accounting for the monetary value of CO_2 emission reductions associated with standards. DOE proposed to use the range $0 to $20 per ton for reductions in the year 2007 in 2007$. 73 FR 62034, 62110 (Oct. 17, 2008). These estimates were intended to represent the lower and upper bounds of the costs and benefits likely to be experienced in the United States. The lower bound was based on an assumption of no benefit and the upper bound was based on an estimate of the mean value of worldwide impacts due to climate change that was reported by the Intergovernmental Panel on Climate Change (IPCC) in its ''Fourth Assessment Report.''

For today's SNOPR, DOE is relying on a new set of values recently developed by an interagency process that conducted a thorough review of existing estimates of the social cost of carbon (SCC). The SCC is intended to be a monetary measure of the incremental damage resulting from greenhouse gas (GHG) emissions, including, but not limited to, net agricultural productivity loss, human health effects, property damages from sea level rise, and changes in ecosystem services. Any effort to quantify and to monetize the harms associated with climate change will raise serious questions of science, economics, and ethics. But with full regard for the limits of both quantification and monetization, the SCC can be used to provide estimates of the social benefits of reductions in GHG emissions.

For at least three reasons, any single estimate of the SCC will be contestable. First, scientific and economic knowledge about the impacts of climate change continues to grow. With new and better information about relevant questions, including the cost, burdens, and possibility of adaptation, current estimates will inevitably change over time. Second, some of the likely and potential damages from climate change—for example, the value society places on adverse impacts on endangered species—are not included in all of the existing economic analyses. These omissions may mean that the best current estimates are too low. Third, controversial ethical judgments, including those involving the treatment of future generations, play a role in judgments about the SCC (see in particular the discussion of the discount rate, below).

To date, regulations have used a range of values for the SCC. For example, a regulation proposed by the U.S. Department of Transportation (DOT) in 2008 assumed a value of $7 per ton CO_2 (2006$) for 2011 emission reductions (with a range of $0–14 for sensitivity analysis). Regulation finalized by DOE used a range of $0–$20 (2007$). Both of these ranges were designed to reflect the value of damages to the United States resulting from carbon emissions, or the ''domestic'' SCC. In the final Model Year 2011 Corporate Average Fuel Economy rule, DOT used both a domestic SCC value of $2/t CO_2 and a

global SCC value of $33/t CO_2 (with sensitivity analysis at $80/t$CO_2$), increasing at 2.4 percent per year thereafter.

In recent months, a variety of agencies have worked to develop an objective methodology for selecting a range of interim SCC estimates to use in regulatory analyses until improved SCC estimates are developed. The following summary reflects the initial results of these efforts and proposes ranges and values for interim social costs of carbon used in this rule. It should be emphasized that the analysis described below is preliminary. These complex issues are of course undergoing a process of continuing review. Relevant agencies will be evaluating and seeking comment on all of the scientific, economic, and ethical issues before establishing final estimates for use in future rulemakings.

The interim judgments resulting from the recent interagency review process can be summarized as follows: (a) DOE and other Federal agencies should consider the global benefits associated with the reductions of CO_2 emissions resulting from efficiency standards and other similar rulemakings, rather continuing the previous focus on domestic benefits; (b) these global benefits should be based on SCC estimates (in 2007$) of $55, $33, $19, $10, and $5 per ton of CO_2 equivalent emitted (or avoided) in 2007; (c) the SCC value of emissions that occur (or are avoided) in future years should be escalated using an annual growth rate of 3 percent from the current values); and (d) domestic benefits are estimated to be approximately 6 percent of the global values. These interim judgments are based on the following considerations.

1. *Global and domestic estimates of SCC.* Because of the distinctive nature of the climate change problem, estimates of both global and domestic SCC values should be considered, but the global measure should be ''primary.'' This approach represents a departure from past practices, which relied, for the most part, on measures of only domestic impacts. As a matter of law, both global and domestic values are permissible; the relevant statutory provisions are ambiguous and allow the agency to choose either measure. (It is true that Federal statutes are presumed not to have extraterritorial effect, in part to ensure that the laws of the United States respect the interests of foreign sovereigns. But use of a global measure for the SCC does not give extraterritorial effect to Federal law and hence does not intrude on such interests.)

It is true that under OMB guidance, analysis from the domestic perspective is required, while analysis from the international perspective is optional. The domestic decisions of one nation are not typically based on a judgment about the effects of those decisions on other nations. But the climate change problem is highly unusual in the sense that it involves (a) a global public good in which (b) the emissions of one nation may inflict significant damages on other nations and (c) the United States is actively engaged in promoting an international agreement to reduce worldwide emissions.

In these circumstances, the global measure is preferred. Use of a global measure reflects the reality of the problem and is expected to contribute to the continuing efforts of the United States to ensure that emission reductions occur in many nations.

Domestic SCC values are also presented. The development of a domestic SCC is greatly complicated by the relatively few region- or country-specific estimates of the SCC in the literature. One potential estimate comes from the DICE (Dynamic Integrated Climate Economy, William Nordhaus) model. In an unpublished paper, Nordhaus (2007) produced disaggregated SCC estimates using a regional version of the DICE model. He reported a U.S. estimate of $1/t$CO_2$ (2007 value, 2007$), which is roughly 11 percent of the global value.

An alternative source of estimates comes from a recent EPA modeling effort using the FUND (Climate Framework for Uncertainty, Negotiation and Distribution, Center for Integrated Study of the Human Dimensions of Global Change) model. The resulting estimates suggest that the ratio of domestic to global benefits varies with key parameter assumptions. With a 3-percent discount rate, for example, the U.S. benefit is about 6 percent of the global benefit for the ''central'' (mean) FUND results, while, for the corresponding ''high'' estimates associated with a higher climate sensitivity and lower global economic growth, the U.S. benefit is less than 4 percent of the global benefit. With a 2-percent discount rate, the U.S. share is about 2 to 5 percent of the global estimate.

Based on this available evidence, a domestic SCC value equal to 6 percent of the global damages is used in this rulemaking. This figure is in the middle of the range of available estimates from the literature. It is recognized that the 6 percent figure is approximate and highly speculative and alternative approaches will be explored before establishing final values for future rulemakings.

2. *Filtering existing analyses.* There are numerous SCC estimates in the existing literature, and it is legitimate to make use of those estimates to produce a figure for current use. A reasonable starting point is provided by the meta-analysis in Richard Tol, ''The Social Cost of Carbon: Trends, Outliers, and Catastrophes, Economics: The Open-Access, Open-Assessment E-Journal,'' Vol. 2, 2008–25. *http://www.economics-ejournal.org/economics/journalarticles/2008–25* (2008). With that starting point, it is proposed to ''filter'' existing SCC estimates by using those that (1) are derived from peer-reviewed studies; (2) do not weight the monetized damages to one country more than those in other countries; (3) use a ''business as usual'' climate scenario; and (4) are based on the most recent published version of each of the three major integrated assessment models (IAMs): FUND, DICE and PAGE (Policy Analysis of the Greenhouse Effect).

Proposal (1) is based on the view that those studies that have been subject to peer review are more likely to be reliable than those that have not been. Proposal (2) is based on a principle of neutrality and simplicity; it does not treat the citizens of one nation differently on the basis of speculative or controversial considerations. Proposal (3) stems from the judgment that as a general rule, the proper way to assess a policy decision is by comparing the implementation of the policy against a counterfactual state where the policy is not implemented. A departure from this approach would be to consider a more dynamic setting in which other countries might implement policies to reduce GHG emissions at an unknown future date, and the United States could choose to implement such a policy now or in the future.

Proposal (4) is based on three complementary judgments. First, the FUND, PAGE, and DICE models now stand as the most comprehensive and reliable efforts to measure the damages from climate change. Second, the latest versions of the three IAMs are likely to reflect the most recent evidence and learning, and hence they are presumed to be superior to those that preceded them. It is acknowledged that earlier versions may contain information that is missing from the latest versions. Third, any effort to choose among them, or to reject one in favor of the others, would be difficult to defend at this time. In the absence of a clear reason to choose among them, it is reasonable to base the SCC on all of them.

The agency is keenly aware that the current IAMs fail to include all relevant information about the likely impacts

from greenhouse gas emissions. For example, ecosystem impacts, including species loss, do not appear to be included in at least two of the models. Some human health impacts, including increases in food-borne illnesses and in the quantity and toxicity of airborne allergens, also appear to be excluded. In addition, there has been considerable recent discussion of the risk of catastrophe and of how best to account for worst-case scenarios. It is not clear whether the three IAMs take adequate account of these potential effects.

3. *Use a model-weighted average of the estimates at each discount rate.* At this time, there appears to be no scientifically valid reason to prefer any of the three major IAMs (FUND, PAGE, and DICE). Consequently, the estimates are based on an equal weighting of estimates from each of the models. Among estimates that remain after applying the filter, the average of all estimates within a model is derived. The estimated SCC is then calculated as the average of the three model-specific averages. This approach ensures that the interim estimate is not biased towards specific models or more prolific authors.

4. *Apply a 3-percent annual growth rate to the chosen SCC values.* SCC is assumed to increase over time, because future emissions are expected to produce larger incremental damages as physical and economic systems become more stressed as the magnitude of climate change increases. Indeed, an implied growth rate in the SCC is produced by most studies that estimate economic damages caused by increased GHG emissions in future years. But neither the rate itself nor the information necessary to derive its implied value is commonly reported. In light of the limited amount of debate thus far about the appropriate growth rate of the SCC, applying a rate of 3 percent per year seems appropriate at this stage. This value is consistent with the range recommended by IPCC (2007) and close to the latest published estimate (Hope, 2008).

For climate change, one of the most complex issues involves the appropriate discount rate. OMB's current guidance offers a detailed discussion of the relevant issues and calls for discount rates of 3 percent and 7 percent. It also permits a sensitivity analysis with low rates for intergenerational problems. (''If your rule will have important intergenerational benefits or costs you might consider a further sensitivity analysis using a lower but positive discount rate in addition to calculating net benefits using discount rates of 3 and 7 percent.'') The SCC is being developed within the general context of the current guidance.

The choice of a discount rate, especially over long periods of time, raises highly contested and exceedingly difficult questions of science, economics, philosophy, and law. See, *e.g.,* William Nordhaus, ''The Challenge of Global Warming (2008); Nicholas Stern, The Economics of Climate Change'' (2007); ''Discounting and Intergenerational Equity'' (Paul Portney and John Weyant, eds., 1999). Under imaginable assumptions, decisions based on cost-benefit analysis with high discount rates might harm future generations—at least if investments are not made for the benefit of those generations. (See Robert Lind, ''Analysis for Intergenerational Discounting,'' *id.* at 173, 176–177.) At the same time, use of low discount rates for particular projects might itself harm future generations, by ensuring that resources are not used in a way that would greatly benefit them. In the context of climate change, questions of intergenerational equity are especially important.

Reasonable arguments support the use of a 3-percent discount rate. First, that rate is among the two figures suggested by OMB guidance, and hence it fits with existing National policy. Second, it is standard to base the discount rate on the compensation that people receive for delaying consumption, and the 3-percent rate is close to the risk-free rate of return, proxied by the return on long term inflation-adjusted U.S. Treasury Bonds. (In the context of climate change, it is possible to object to this standard method for deriving the discount rate.) Although these rates are currently closer to 2.5 percent, the use of 3 percent provides an adjustment for the liquidity premium that is reflected in these bonds' returns.

At the same time, other arguments support use of a 5-percent discount rate. First, that rate can also be justified by reference to the level of compensation for delaying consumption, because it fits with market behavior with respect to individuals' willingness to trade off consumption across periods as measured by the estimated post-tax average real returns to private investment (*e.g.,* the S&P 500). In the climate setting, the 5-percent discount rate may be preferable to the riskless rate because it is based on risky investments and the return to projects to mitigate climate change is also risky. In contrast, the 3-percent riskless rate may be a more appropriate discount rate for projects where the return is known with a high degree of confidence (*e.g.,* highway guardrails).

Second, 5 percent, and not 3 percent, is roughly consistent with estimates implied by reasonable inputs to the theoretically derived Ramsey equation, which specifies the optimal time path for consumption. That equation specifies the optimal discount rate as the sum of two components. The first reflects the fact that consumption in the future is likely to be higher than consumption today (even accounting for climate impacts), so diminishing marginal utility implies that the same monetary damage will cause a smaller reduction of utility in the future. Standard estimates of this term from the economics literature are in the range of 3 to 5 percent. The second component reflects the possibility that a lower weight should be placed on utility in the future, to account for social impatience or extinction risk, which is specified by a pure rate of time preference (PRTP). A conventional estimate of the PRTP is 2 percent. (Some observers believe that a principle of intergenerational equity suggests that the PRTP should be close to zero.) It follows that discount rate of 5 percent is within the range of values which are able to be derived from the Ramsey equation, albeit at the low end of the range of estimates usually associated with Ramsey discounting.

It is recognized that the arguments above—for use of market behavior and the Ramsey equation—face objections in the context of climate change, and of course there are alternative approaches. In light of climate change, it is possible that consumption in the future will not be higher than consumption today, and if so, the Ramsey equation will suggest a lower figure. Some people have suggested that a very low discount rate, below 3 percent, is justified in light of the ethical considerations calling for a principle of intergenerational neutrality. See Nicholas Stern, ''The Economics of Climate Change'' (2007); for contrary views, see William Nordhaus, The A Question of Balance (2008); Martin Weitzman, ''*Review* of the *Stern Review* on the Economics of Climate Change.'' *Journal of Economic Literature,* 45(3): 703–724 (2007). Additionally, some analyses attempt to deal with uncertainty with respect to interest rates over time; a possible approach enabling the consideration of such uncertainties is discussed below. Richard Newell and William Pizer, ''Discounting the Distant Future: How Much do Uncertain Rates Increase Valuations?'' J. Environ. Econ. Manage. 46 (*2003*) 52–71.

The application of the methodology outlined above yields estimates of the SCC that are reported in Table V18. These estimates are reported separately

using 3-percent and 5-percent discount rates. The cells are empty in rows 10 and 11 because these studies did not report estimates of the SCC at a 3-percent discount rate. The model-weighted means are reported in the final or summary row; they are $33 per t CO_2 at a 3-percent discount rate and $5 per t CO_2 with a 5-percent discount rate.

TABLE V.18—GLOBAL SOCIAL COST OF CARBON (SCC) ESTIMATES ($/T CO_2 IN 2007 (2006$)), BASED ON 3% AND 5% DISCOUNT RATES*

	Model	Study	Climate scenario	3%	5%
1	FUND	Anthoff et al. 2009	FUND default	6	−1
2	FUND	Anthoff et al. 2009	SRES A1b	1	−1
3	FUND	Anthoff et al. 2009	SRES A2	9	−1
4	FUND	Link and Tol 2004	No THC	12	3
5	FUND	Link and Tol 2004	THC continues	12	2
6	FUND	Guo et al. 2006	Constant PRTP	5	−1
7	FUND	Guo et al. 2006	Gollier discount 1	14	0
8	FUND	Guo et al. 2006	Gollier discount 2	7	−1
			FUND Mean	8.25	0
9	PAGE	Wahba & Hope 2006	A2-scen	57	7
10	PAGE	Hope 2006			7
11	DICE	Nordhaus 2008			8
Summary			Model-weighted Mean	33	5

*The sample includes all peer reviewed, non-equity-weighted estimates included in Tol (2008), Nordhaus (2008), Hope (2008), and Anthoff et al. (2009), that are based on the most recent published version of FUND, PAGE, or DICE and use business-as-usual climate scenarios. All values are based on the best available information from the underlying studies about the base year and year dollars, rather than the Tol (2008) assumption that all estimates included in his review are 1995 values in 1995$. All values were updated to 2007 using a 3-percent annual growth rate in the SCC, and adjusted for inflation using GDP deflator.

DOE has conducted analyses at $33 and $5 per ton as these represent the estimates associated with the 3 percent and 5 percent discount rates, respectively. The 3 percent and 5 percent estimates have independent appeal and at this time a clear preference for one over the other is not warranted. Thus, DOE has also included—and centered its current attention on—the average of the estimates associated with these discount rates, which is $19. (Based on the $19 global value, the domestic value would be $1.14 per ton of CO_2 equivalent.)

It is true that there is uncertainty about interest rates over long time horizons. Recognizing that point, Newell and Pizer have made a careful effort to adjust for that uncertainty. See Newell and Pizer, supra. This is a relatively recent contribution to the literature.

There are several concerns with using this approach in this context. First, it would be a departure from current OMB guidance. Second, an approach that would average what emerges from discount rates of 3 percent and 5 percent reflects uncertainty about the discount rate, but based on a different model of uncertainty. The Newell-Pizer approach models discount rate uncertainty as something that evolves over time; in contrast, one alternative approach would assume that there is a single discount rate with equal probability of 3 percent and 5 percent.

Table V.19 reports on the application of the Newell-Pizer adjustments. The precise numbers depend on the assumptions about the data generating process that governs interest rates. Columns (1a) and (1b) assume that ''random walk'' model best describes the data and uses 3-percent and 5-percent discount rates, respectively. Columns (2a) and (2b) repeat this, except that it assumes a ''mean-reverting'' process. As Newell and Pizer report, there is stronger empirical support for the random walk model.

TABLE V.19—GLOBAL SOCIAL COST OF CARBON ESTIMATES ($/T CO_2 IN 2007 IN 2006$),* USING NEWELL & PIZER ADJUSTMENT FOR FUTURE DISCOUNT RATE UNCERTAINTY**

	Model	Study	Climate scenario	Random-walk model		Mean-reverting model	
				3%	5%	3%	5%
				(1a)	(1b)	(2a)	(2b)
1	FUND	Anthoff et al. 2009	FUND default	10	0	7	−1
2	FUND	Anthoff et al. 2009	SRES A1b	2	0	1	−1
3	FUND	Anthoff et al. 2009	SRES A2	15	0	10	−1
4	FUND	Link and Tol 2004	No THC	20	6	13	4
5	FUND	Link and Tol 2004	THC continues	20	4	13	2
6	FUND	Guo et al. 2006	Constant PRTP	9	0	6	−1
7	FUND	Guo et al. 2006	Gollier discount 1	14	0	14	0
8	FUND	Guo et al. 2006	Gollier discount 2	7	−1	7	−1
			FUND Mean	12	1	9	0
9	PAGE	Wahba & Hope 2006	A2-scen	97	13	63	8
10	PAGE	Hope 2006			13		8
11	DICE	Nordhaus 2008			15		9

TABLE V.19—GLOBAL SOCIAL COST OF CARBON ESTIMATES ($/T CO_2 IN 2007 IN 2006$),* USING NEWELL & PIZER ADJUSTMENT FOR FUTURE DISCOUNT RATE UNCERTAINTY**—Continued

	Model	Study	Climate scenario	Random-walk model		Mean-reverting model	
				3%	5%	3%	5%
Summary			Model-weighted Mean	55	10	36	6

* The sample includes all peer reviewed, non-equity-weighted estimates included in Tol (2008), Nordhaus (2008), Hope (2008), and Anthoff et al. (2009), that are based on the most recent published version of FUND, PAGE, or DICE and use business-as-usual climate scenarios. All values are based on the best available information from the underlying studies about the base year and year dollars, rather than the Tol (2008) assumption that all estimates included in his review are 1995 values in 1995$. All values were updated to 2007 using a 3-percent annual growth rate in the SCC, and adjusted for inflation using GDP deflator.

** Assumes a starting discount rate of 3 percent. Newell and Pizer (2003) based adjustment factors are not applied to estimates from Guo *et al.* (2006) that use a different approach to account for discount rate uncertainty (rows 7–8).

The resulting estimates of the social cost of carbon are necessarily greater. When the adjustments from the random walk model are applied, the estimates of the social cost of carbon are $10 and $55, with the 3 percent and 5 percent discount rates, respectively. The application of the mean-reverting adjustment yields estimates of $6 and $36. Since the random walk model has greater support from the data, DOE also conducted analyses with the value of the SCC set at $10 and $55.

In summary, DOE considered in its decision process for this notice of proposed rulemaking the potential global benefits resulting from reduced CO_2 emissions valued at $5, $10, $19, $30 and $55 per metric ton, and has also presented the domestic benefits derived using a value of $1.14 per metric ton. All of these unit values represent emissions that are valued in 2007$. The final net present values for cumulative emissions reductions are reported in 2008$ so that they can be compared with other rulemaking analyses in the same dollar units.

Table V. and Table V.21 present the resulting estimates of the potential range of NPV benefits associated with reducing CO_2 emissions.

TABLE V.20—ESTIMATES OF VALUE OF CO_2 EMISSIONS REDUCTIONS UNDER COMMERCIAL CLOTHES WASHER TRIAL STANDARD LEVELS AT 7-PERCENT DISCOUNT RATE

TSL	Estimated cumulative CO_2 emission reductions (Mt)	Value of CO_2 emission reductions (million 2008$)					
		Domestic	Global				
		$1.14/ton CO_2	$5/ton CO_2	$10/ton CO_2	$19/ton CO_2	$33/ton CO_2	$55/ton CO_2
1	2.36	1	6	12	22	39	65
2	2.39	1	6	12	23	40	66
3	5.07	3	13	25	48	84	140
4	5.66	3	14	28	54	93	156
5	6.11	3	15	31	58	101	168

TABLE V.21—ESTIMATES OF VALUE OF CO_2 EMISSIONS REDUCTIONS UNDER COMMERCIAL CLOTHES WASHER TRIAL STANDARD LEVELS AT 3-PERCENT DISCOUNT RATE

TSL	Estimated cumulative CO_2 emission reductions (Mt)	Value of CO_2 emission reductions (million 2008$)					
		Domestic	Global				
		$1.14/ton CO_2	$5/ton CO_2	$10/ton CO_2	$19/ton CO_2	$33/ton CO_2	$55/ton CO_2
1	2.36	3	13	26	49	84	141
2	2.39	3	13	26	49	86	143
3	5.07	6	28	55	105	182	303
4	5.66	7	31	61	117	202	337
5	6.11	8	33	66	126	219	364

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing CO_2 emissions is subject to likely change.

DOE, together with other Federal agencies, is reviewing various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues, such as whether the appropriate values should represent domestic U.S. benefits, as well as global benefits (and costs). Given the complexity of the many issues involved, this review is ongoing. However, consistent with DOE's legal obligations,

and taking into account the uncertainty involved with this particular issue, DOE has included in today's SNOPR the most recent values and analyses employed in a rulemaking by another Federal agency.

DOE also investigated the potential monetary benefit of reduced NO_X and Hg emissions from the TSLs it considered. As previously stated, DOE's initial analysis assumed the presence of nationwide emission caps on SO_2 and Hg, and caps on NO_X emissions in the 28 States covered by CAIR. In the presence of these caps, DOE concluded that negligible physical reductions in power sector emissions would occur, but that the standards could put downward pressure on the prices of emissions allowances in cap and trade markets. Estimating this effect is very difficult because of factors such as credit banking, which can change the trajectory of prices. DOE has concluded that the effect from energy conservation standards on SO_2 allowance prices is likely to be negligible, based on runs of the NEMS–BT model. See chapter 16 of the SNOPR TSD for further details.

As noted above, standards would not produce an economic impact in the form of lower prices for NO_X emissions allowance credits in the 28 eastern States and D.C. covered by the CAIR cap. However, new or amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by CAIR. DOE estimated the monetized value of NO_X emissions reductions resulting from each of the TSLs considered for today's SNOPR based on environmental damage estimates from the literature. Available estimates suggest a very wide range of monetary values for NO_X emissions, ranging from $370 per ton to $3,800 per ton of NO_X from stationary sources, measured in 2001$ (equivalent to a range of $432 per ton to $4,441 per ton in 2007$). Refer to the OMB, Office of Information and Regulatory Affairs, ''2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities,'' Washington, DC, for additional information.

For Hg emissions reductions, DOE estimated the national monetized values resulting from the TSLs considered for today's SNOPR based on environmental damage estimates from the literature. DOE determined that the impact of Hg emissions from power plants on humans is considered highly uncertain. However, DOE identified two estimates of the environmental damage of Hg based on two estimates of the adverse impact of childhood exposure to methyl mercury on IQ for American children, and subsequent loss of lifetime economic productivity resulting from these IQ losses. The high-end estimate is based on an estimate of the current aggregate cost of the loss of IQ in American children that results from exposure to Hg of U.S. power plant origin ($1.3 billion per year in year 2000$), which works out to $32.6 million per ton emitted per year (2007$).[40] The low-end estimate is $0.66 million per ton emitted (in 2004$) or $0.73 million per ton in 2007$. DOE derived this estimate from an evaluation of mercury control that used different methods and assumptions from the first study but was also based on the present value of the lifetime earnings of children exposed.[41]

Table V.22 and Table V.23 present the resulting estimates of the potential range of present value benefits associated with reduced national NO_X and Hg emissions from the TSLs DOE considered. The final net present values for cumulative emissions reductions are reported in 2008$ so that they can be compared with other rulemaking analyses in the same dollar units.

TABLE V.22—ESTIMATES OF VALUE OF REDUCTIONS OF HG AND NO_X UNDER TRIAL STANDARD LEVELS AT A 7-PERCENT DISCOUNT RATE

Commercial clothes washer TSL	Estimated cumulative NO_X emission reductions (kt)	Value of estimated NO_X emission reductions (million 2008$)	Estimated cumulative Hg emission reductions (t)	Value of estimated Hg emission reductions (million 2008$)
1	1.43	0.19 to 1.96	0 to 0.013	0 to 0.12.
2	1.45	0.19 to 1.99	0 to 0.013	0 to 0.12.
3	3.04	0.41 to 4.17	0 to 0.029	0 to 0.27.
4	3.39	0.45 to 4.64	0 to 0.032	0 to 0.30.
5	3.66	0.49 to 5.01	0 to 0.035	0 to 0.33.

TABLE V.23—ESTIMATES OF VALUE OF REDUCTIONS OF HG AND NO_X UNDER TRIAL STANDARD LEVELS AT A 3-PERCENT DISCOUNT RATE

Commercial clothes washer TSL	Estimated cumulative NO_X emission reductions (kt)	Value of estimated NO_X emission reductions (million 2008$)	Estimated cumulative Hg emission reductions (t)	Value of estimated Hg emission reductions (million 2008$)
1	1.43	0.38 to 3.92	0 to 0.013	0 to 0.25.
2	1.45	0.39 to 3.98	0 to 0.013	0 to 0.26.
3	3.04	0.81 to 8.36	0 to 0.029	0 to 0.56.
4	3.39	0.91 to 9.31	0 to 0.032	0 to 0.63.
5	3.66	0.98 to 10.04	0 to 0.035	0 to 0.68.

[40] Trasande, L., *et al.,* ''Applying Cost Analyses to Drive Policy that Protects Children,'' 1076 Ann. N.Y. Acad. Sci. 911 (2006).

[41] Ted Gayer and Robert Hahn, ''Designing Environmental Policy: Lessons from the Regulation of Mercury Emissions,'' Regulatory Analysis 05–01, AEI-Brookings Joint Center for Regulatory Studies, Washington, DC (2004). A version of this paper was published in the *Journal of Regulatory Economics* in 2006. The estimate was derived by back-calculating the annual benefits per ton from the net present value of benefits reported in the study.

TABLE V.24—ESTIMATES OF ADDING NPV OF CUSTOMER SAVINGS TO NPV OF LOW- AND HIGH-END GLOBAL MONETIZED BENEFITS FROM CO_2 NO_X, AND HG EMISSIONS REDUCTIONS FOR ALL TSLS AT 3- AND 7-PERCENT DISCOUNT RATES

TSL	CO_2 value of $5/metric ton CO_2* billion 2008$ and low values for NO_X and Hg**		CO_2 value of $55/metric ton CO_2* billion 2008$ and high values for NO_X and Hg***	
	7-percent discount rate	3-percent discount rate	7-percent discount rate	3-percent discount rate
1	0.03	0.17	0.09	0.30
2	0.05	0.21	0.11	0.34
3	0.73	1.81	0.86	2.09
4	0.83	2.09	0.98	2.41
5	1.04	2.53	1.20	2.87

* These values per ton represent the global negative externalities of CO_2. The unit values are in 2007$ while cumulative NPV is in 2008$.

** Low Value corresponds to a value of $432 per ton of NO_X emissions in 2007$ and no effect on Hg emissions. The unit values are in 2007$ while cumulative NPV is in 2008$.

*** High Value corresponds to a value of $4,441 per ton of NO_X emissions in 2007$ and $32.6 million per ton of Hg emissions in 2007$. The unit values are in 2007$ while cumulative NPV is in 2008$.

TABLE V.25—ESTIMATES OF ADDING NPV OF CUSTOMER SAVINGS TO NPV OF LOW- AND HIGH-END MONETIZED BENEFITS FROM CO_2 EMISSIONS REDUCTIONS FOR ALL TSLS AT 3- AND 7-PERCENT DISCOUNT RATES

TSL	CO_2 value of $5/metric ton CO_2* billion 2008$		CO_2 value of $55/metric ton CO_2* billion 2008$	
	7-percent discount rate	3-percent discount rate	7-percent discount rate	3-percent discount rate
1	0.02	0.09	0.08	0.22
2	0.03	0.11	0.09	0.24
3	0.37	0.92	0.50	1.19
4	0.42	1.06	0.57	1.37
5	0.53	1.28	0.68	1.61

* These values per ton represent the global negative externalities of CO_2. The unit values are in 2007$ while cumulative NPV is in 2008$.

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.24 presents the NPV values for CCWs that would result if DOE were to apply the low- and high-end estimates of the potential benefits resulting from reduced CO_2, NO_X and Hg emissions to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7- and 3-percent discount rate. Table V.24 presents the NPV values for CCWs that would result if DOE were to apply the low- and high-end estimates of the potential global benefits resulting from reduced CO_2 emissions only to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7- and 3-percent discount rate. For CO_2, only the range of global benefit values are used, $5 and $55 in 2007$, although the actual benefit estimates are provided in 2008$.

Although comparing the value of consumer savings to the values of emission reductions provides a valuable perspective, please note the following: (1) The national consumer savings are domestic U.S. consumer monetary savings found in market transactions while the values of emission reductions are based on ranges of estimates of imputed marginal social costs, which, in the case of CO_2, are meant to reflect global benefits; and (2) the assessments of consumer savings and emission-related benefits are performed with different computer models, leading to different time frames for the analyses. The present value of national consumer savings is measured for the period 2015–2065 (31 years from 2015 to 2045 inclusive, plus the longest lifetime of the equipment shipped in the 31st year). However, the timeframes of the benefits associated with the emission reductions differ. For example, the value of CO_2 emission reductions is meant to reflect the present value of all future climate related impacts, even those beyond 2065.

DOE seeks comment on the above presentation of NPV values and on the consideration of GHG emissions in future energy efficiency standards rulemakings, including alternative methodological approaches to including GHG emissions in its analysis. More specifically, DOE seeks comment on both how it integrates monetized GHG emissions or Social Cost of Carbon values, as well as other monetized benefits or costs, into its analysis and models, and also on suggested alternatives to the current approach.

Table V.26 presents the estimated wastewater discharge reductions due to the TSLs for CCWs. In chapter 16 of the TSD accompanying this notice, DOE reports annual changes in wastewater discharge attributable to each TSL.

TABLE V.26—SUMMARY OF WASTEWATER DISCHARGE REDUCTIONS

[Cumulative Reductions for Equipment Sold from 2013 to 2043]

	TSL				
	1	2	3	4	5
Wastewater Discharge Reduction *(trillion gallons)*	0.00	0.01	0.14	0.16	0.21

C. Proposed Standards

1. Overview

Under 42 U.S.C. 6295(o)(2)(A) and 6316(a), EPCA requires that any new or amended energy conservation standard for any type (or class) of covered product or equipment be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, in light of the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of the products or equipment subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products or equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products or equipment that are likely to result from the imposition of the standard;

(3) The total projected amount of energy (or, as applicable, water) savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products or equipment likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i) and 6316(a))

The new or amended standard also must ''result in significant conservation of energy.''

(42 U.S.C. 6295(o)(3)(B) and 6316(a))

In selecting the proposed energy conservation standards for CCWs for consideration in today's SNOPR, DOE started by examining the maximum technologically feasible levels, and determined whether those levels were economically justified. If DOE determined that the maximum technologically feasible level was not justified, DOE then analyzed the next lower TSL to determine whether that level was economically justified. DOE repeated this procedure until it identified an economically justified TSL.

To aid the reader in understanding the benefits and/or burdens of each TSL, the following tables summarize the quantitative analytical results for each TSL, based on the assumptions and methodology discussed above. These tables present the results—or, in some cases, a range of results—for each TSL. The range of values reported in these tables for industry impacts represents the results for the different markup scenarios that DOE used to estimate manufacturer impacts.

In addition to the quantitative results, DOE also considers other burdens and benefits that affect economic justification.

In sum, today's proposed standard levels for the equipment that is the subject of this rulemaking reflect DOE's careful balancing of the relevant statutory factors under EPCA. After considering public comments on this SNOPR, DOE will publish a final rule that either adopts the proposed TSL, one of the higher or lower TSLs, or some value in between.

2. Conclusion

Table V.27 presents a summary of the quantitative results for each CCW TSL.

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Table V.27 Summary of Results for Commercial Clothes Washers

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Primary Energy Saved (quads)	0.04	0.04	0.10	0.11	0.12
7% Discount Rate	0.01	0.01	0.03	0.03	0.03
3% Discount Rate	0.02	0.02	0.06	0.06	0.07
Primary Water Saved (trillion gallons)	0.00	0.01	0.14	0.16	0.21
7% Discount Rate	0.00	0.00	0.04	0.04	0.06
3% Discount Rate	0.00	0.00	0.08	0.09	0.11
Generation Capacity Reduction (gigawatts)**	0.005	0.005	0.010	0.011	0.012
NPV (2008$ billion):					
7% Discount Rate	0.01	0.02	0.36	0.41	0.51
3% Discount Rate	0.08	0.10	0.89	1.03	1.25
Industry Impacts:					
Industry NPV (2008$ million)	4 – 3	1 – 0	(5) – (7)	(8) – (10)	(20) – (23)
Industry NPV (% Change)	6.0 – 4.5	2.2 – 0.8	(7.8) – (11.4)	(12.7) – (16.6)	(33.1) – (37.3)
Cumulative Emissions Impacts†:					
CO_2 (Mt)	2.36	2.39	5.07	5.66	6.11
NO_x (kt)	1.43	1.45	3.04	3.39	3.66
Hg (t)	0 – 0.01	0 – 0.01	0 – 0.03	0 – 0.03	0 – 0.03
Value of Emission Reductions:					
CO_2 (2008$ million)††					
7% Discount Rate	6 – 65	6 – 66	13 – 140	14 – 156	15 – 168
3% Discount Rate	13 – 141	13 – 143	28 – 303	31 – 337	33 – 364
NO_x (2008$ million)					
7% Discount Rate	0.2 – 2.0	0.2 – 2.0	0.4 – 4.2	0.5 – 4.6	0.5 – 5.0
3% Discount Rate	0.4 – 3.9	0.4 – 4.0	0.8 – 8.4	0.9 – 9.3	1.0 – 10.0
Hg (2008$ million)					
7% Discount Rate	0.0 – 0.1	0.0 – 0.1	0.0 – 0.3	0.0 – 0.3	0.0 – 0.3
3% Discount Rate	0.0 – 0.3	0.0 – 0.3	0.0 – 0.6	0.0 – 0.6	0.0 – 0.7
Wastewater Discharge Impacts (trillion gallons)	0.00	0.01	0.14	0.16	0.21
Mean LCC Savings* (2008$):					
Top-Loading, Multi-Family	(8.1)	(8.1)	179	179	179

Top-Loading, Laundromat	(17.7)	(17.7)	190	190	190
Front-Loading, Multi-Family	4.7	19.5	19.5	91	203
Front-Loading, Laundromat	5.2	22.0	22.0	93	216
Median PBP (years):					
Top-Loading, Multi-Family	11.7	11.7	4.6	4.6	4.6
Top-Loading, Laundromat	7.9	7.9	2.8	2.8	2.8
Front-Loading, Multi-Family	0.0	0.4	0.4	3.0	2.9
Front-Loading, Laundromat	0.0	0.2	0.2	1.8	1.6
LCC Results:					
Top-Loading					
Multi-Family					
Net Cost (%)	43.3	43.3	13.8	13.8	13.8
No Impact (%)	35.3	35.3	1.2	1.2	1.2
Net Benefit (%)	21.5	21.5	85.0	85.0	85.0
Laundromat					
Net Cost (%)	51.4	51.4	2.9	2.9	2.9
No Impact (%)	35.3	35.3	1.2	1.2	1.2
Net Benefit (%)	13.3	13.3	95.9	95.9	95.9
Front-Loading					
Multi-Family					
Net Cost (%)	0.0	0.0	0.0	1.4	1.1
No Impact (%)	96.3	96.3	96.3	23.1	0.0
Net Benefit (%)	3.7	3.7	3.7	75.5	98.9
Laundromat					
Net Cost (%)	0.0	0.0	0.0	0.0	0.0
No Impact (%)	96.3	96.3	96.3	23.1	0.0
Net Benefit (%)	3.7	3.7	3.7	76.9	100.0

* Parentheses indicate negative (-) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

** Changes in installed generation capacity by 2043 based on AEO 2009 April Release Reference Case.

† CO_2 emissions impacts include physical reductions at power plants and at buildings where the appliance is being used. NO_x emissions impacts include physical reductions at power plants and at buildings where the appliance is being used.

†† Range of the economic value of CO_2 reductions based on global estimates of the benefit of reduced CO_2 emissions.

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First, DOE considered TSL 5, the max-tech level. TSL 5 would likely save 0.12 quads of energy and 0.21 trillion gallons of water through 2043, an amount DOE

considers significant. For the Nation as a whole, DOE projects that TSL 5 would result in a net increase of $0.51 billion in NPV, using a discount rate of 7 percent. The emissions reductions at TSL 5 are 6.11 Mt of CO_2, 3.66 kt of NO_X, and 0 t to 0.03 t of Hg. At TSL 5, the estimated benefit of reducing CO_2 emissions based on global estimates of the value of CO_2 ranges from $15 million to $168 million at a 7-percent discount rate and $33 million to $364 million at a 3-percent discount rate. Total generating capacity in 2043 is estimated to decrease compared to the reference case by 0.012 GW under TSL 5.

At TSL 5, DOE projects that the average top-loading CCW consumer would experience a decrease in LCC of $179 in multi-family applications and $190 in laundromats. DOE also estimates an LCC decrease for an overwhelming majority of consumers in the Nation that purchase top-loading CCWs—85 percent of consumers in multi-family applications and 96 percent of consumers in laundromats. The median payback period of the average consumer at TSL 5 in multi-family applications and in laundromats is projected to be 4.6 years and 2.8 years, respectively.

At TSL 5, DOE projects that the average front-loading CCW consumer would experience a decrease in LCC of $203 in multi-family applications and $216 in laundromats. DOE also estimates an LCC decrease for an overwhelming majority of consumers that purchase front-loading CCWs—99 percent of consumers in multi-family applications and 100 percent of consumers in laundromats. The median payback period of the average consumer at TSL 5 in multi-family applications and in laundromats is projected to be 2.9 years and 1.6 years, respectively.

At TSL 5, DOE estimated the projected change in INPV ranges from a total decrease of $20.4 million for both equipment classes to a total decrease of $23.0 million. At TSL 5, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about reduced shipments are realized. TSL 5 could result in a net loss as high as 37.3 percent in INPV to CCW manufacturers. Also, DOE is especially sensitive to the potentially severe impacts to the LVM of CCWs. Because the LVM's clothes washer revenue is so dependent on CCW sales, DOE is concerned that TSL 5 will cause material harm to the LVM.

Although DOE recognizes the increased economic benefits that could result from TSL 5, DOE has tentatively concluded that the benefits of a Federal standard at TSL 5 would be outweighed by the potential for disincentivizing consumers from purchasing more efficient front-loading CCWs. At TSL 5, front-loading CCWs are highly efficient but have a purchase price estimated to be $497 more expensive than top-loading CCWs. With such a large price differential between the two types of CCWs, and with less than 2 percent of the front-loading market at TSL 5, DOE is concerned that significant numbers of potential consumers of front-loading CCWs would choose to purchase a less efficient top-loading unit.

As described in section III.E.2.c, DOE did analyze the impacts of increased purchase prices for each equipment class but independently of the other. Because the price impacts for more efficient top-loaders are higher than those for more efficient front-loaders, DOE estimated that top-loading CCW sales would decrease slightly more rapidly than for front-loaders. But DOE was not able to estimate the cross price elasticity of demand between the two equipment classes to determine whether consumers of front-loading CCWs would switch to less expensive top-loaders.

If potential front-loading CCW consumers did decide to switch to less expensive top-loading washers, the NES and NPV realized from TSL 5 would be diminished. DOE notes that in developing the energy savings and water savings estimates for TSL 5, the agency effectively held constant the ratio of front-loading to top-loading CCW shipments across the various TSLs. Particularly at TSL 3 to TSL 5, the differences in these estimates are small, especially at a 7-percent discount rate. DOE requests comment as to whether it should account for the cross price elasticity of demand between the two equipment classes when calculating the anticipated energy and water savings at the different TSLs. DOE also seeks relevant data or other information on this topic. DOE believes that the values currently in Table V.27 represent the high end of the potential energy and water savings for these TSLs. Taking into account price elasticity of demand could affect the anticipated energy and water savings of the various TSLs, and it could potentially result in a change in the TSL with the highest projected energy/water savings level.

In addition, TSL 5 would adversely impact manufacturers' INPV to a significant extent. Not only does the industry face a potential, significant loss in industry INPV, but manufacturers would also need to make significant capital investments for both types of CCWs in order to produce both top-loading and front-loading washers at the maximum technologically feasible levels. After carefully considering the analysis and weighing the benefits and burdens of TSL 5, the Secretary has reached the following initial conclusion: At TSL 5, the benefits of energy savings, economic benefit, and emissions reductions would be outweighed by the potential for giving consumers less incentive to purchase high efficiency front-loading CCWs and the large capital conversion costs that could result in a substantial reduction in INPV for manufacturers.

Next, DOE considered TSL 4. TSL 4 would likely save 0.11 quads of energy and 0.16 trillion gallons of water through 2043, an amount DOE considers significant. For the Nation as a whole, DOE projects that TSL 4 would result in a net increase of $0.41 billion in NPV, using a discount rate of 7 percent. The emissions reductions at TSL 4 are 5.66 Mt of CO_2, 3.39 kt of NO_X, and 0 t to 0.03 t of Hg. At TSL 4, the estimated benefits of reducing CO_2 emissions based on global estimates of the value of CO_2 ranges from $14 million to $156 million at a 7-percent discount rate and $31 million to $337 million at a 3-percent discount rate. Total generating capacity in 2043 is estimated to decrease compared to the reference case by 0.011 GW under TSL 4.

At TSL 4, top-loading CCWs have the same efficiency as at TSL 5. Therefore, top-loading CCW consumers will experience the same LCC impacts and payback periods as TSL 5. At TSL 4 for front-loading CCWs, DOE projects that the average front-loading CCW consumer would experience a decrease in LCC of $91 in multi-family applications and $93 in laundromats. DOE also estimates an LCC decrease for an overwhelming majority of consumers that purchase front-loading CCWs—76 percent of consumers in multi-family applications and 77 percent of consumers in laundromats. The median payback period of the average consumer at TSL 4 in multi-family applications and in laundromats is projected to be 3.0 years and 1.8 years, respectively.

DOE estimated the projected change in INPV ranges from a decrease of $7.8 million to a decrease of $10.2 million. At TSL 4, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about reduced shipments are realized. TSL 4 could result in a net loss as high as 16.6 percent in INPV to CCW manufacturers. Also, DOE is especially sensitive to the potentially severe impacts to the LVM. Since the LVM's clothes washer revenue is so dependent on CCW sales, DOE is concerned that TSL 4 will materially harm the LVM.

Although DOE recognizes the increased economic benefits that could result from TSL 4, DOE has the same concerns regarding TSL 4 as for TSL 5. Namely, DOE has concerns as to the potential of TSL 4 to give consumers less incentive to purchase more efficient front-loading washers. At TSL 4, front-loading CCWs are highly efficient but have a purchase price estimated to be $454 more expensive than top-loading washers. With such a price differential between the two types of CCWs, and with less than 4 percent of the front-loading market currently meeting TSL 4, DOE is concerned that a significant number of potential consumers of front-loading CCWs would be more likely choose to purchase a top-loading CCW, which is less efficient. If potential front-loading CCW consumers did decide to switch to top-loading models, the NES and NPV realized from TSL 4 would be diminished. In addition, TSL 4 would adversely impact manufacturers' INPV to a significant extent. Not only does the industry face a potential loss in industry INPV, but manufacturers would also need to make significant capital investments for both types of CCWs in order to produce both top-loading washers at the maximum technologically feasible level and front-loading washers at a level which only 3 percent of the market currently meets. After carefully considering the analysis and weighing the benefits and burdens of TSL 4, the Secretary has reached the following initial conclusion: At TSL 4, the benefits of energy savings, economic benefit, and emissions reductions would be outweighed by the potential for giving consumers less incentive to purchase high efficiency front-loading CCWs and the large capital conversion costs that could result in a substantial reduction in INPV for manufacturers.

Next, DOE considered TSL 3. TSL 3 would likely save 0.10 quads of energy and 0.14 trillion gallons of water through 2043, an amount DOE considers significant. For the Nation as a whole, DOE projects that TSL 3 would result in a net increase of $0.36 billion in NPV, using a discount rate of 7 percent. The emissions reductions at TSL 3 are 5.07 Mt of CO_2, 3.04 kt of NO_X, and 0 t to 0.03 t of Hg. The estimated benefits of reducing CO_2 emissions based on global estimates of the value of CO_2 ranges from $13 million to $140 million at a 7-percent discount rate and $28 million to $303 million at a 3-percent discount rate. Total generating capacity in 2043 is estimated to decrease compared to the reference case by 0.010 GW under TSL 3.

At TSL 3, top-loading CCWs have the same efficiency as at TSL 5. Therefore, top-loading CCW consumers would experience the same LCC impacts and payback periods as TSL 5. At TSL 3 for front-loading CCWs, DOE projects that the average front-loading CCW consumer would experience a decrease in LCC of $19 in multi-family applications and $22 in laundromats. DOE also estimates an LCC decrease for all consumers that do not already purchase front-loading CCWs with an efficiency meeting TSL 3. The median payback period of the average consumer at TSL 3 in multi-family applications and in laundromats is projected to be 0.4 years and 0.2 years, respectively.

DOE estimated the projected change in INPV ranges from a decrease of $4.8 million to a decrease of $7.0 million. At TSL 3, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about reduced shipments are realized. In TSL 3 could result in a net loss as high as 11.4 percent in INPV to CCW manufacturers. Also, DOE is especially sensitive to the potential adverse impacts to the LVM. Since the LVM's clothes washer revenue is so dependent on CCW sales, DOE is concerned that TSL 3 could disproportionately impact the LVM.

DOE recognizes the increased economic benefits that could result from TSL 3. DOE still has concerns of the potential for giving consumers less incentive to purchase more efficient front-loading washers, but at TSL 3, the price difference between front-loading and top-loading CCWs drops to $414. However, given that DOE projects that the average front-loading CCW consumer would experience an LCC savings at TSL 3, DOE believes that most front-loading CCW consumers not already purchasing washers at TSL 3 would likely continue to purchase a front-loading unit if standards are set at TSL 3. DOE notes that TSL 3 adversely impacts manufacturers' INPV, but because such a large percent of the front-loading market is at TSL 3, manufacturers would likely not need to make significant capital investments for front-loading CCWs. Product development and conversion expenses and capital investments would only be required in order to produce higher efficiency top-loading washers at TSL 3.

After considering the analysis and weighing the benefits and the burdens, DOE has tentatively concluded that the benefits of a TSL 3 standard outweigh the burdens. In particular, the Secretary has tentatively concluded that TSL 3 saves a significant amount of energy and is technologically feasible and economically justified. Therefore, DOE today proposes to adopt the energy conservation standards for CCWs at TSL 3. Table V.28 lists today's proposed energy conservation standards for CCWs. DOE's proposal to amend energy conservation standards for CCWs at TSL 3 reflects its tentative conclusion that this standard level would minimize the potential adverse impacts on the LVM and, therefore, would also minimize the adverse impacts on CCW market competition. However, DOE will carefully consider DOJ's review of today's proposed standards for CCWs and any public comment received on these impacts before issuing its final rule for this equipment. It is DOE's intent to set a standard that will not produce significant adverse impacts on competition in this market. In proposing the standards in today's notice, DOE has also taken into consideration DOJ's determination on the standards proposed in the October 2008 NOPR.

TABLE V.28—PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL CLOTHES WASHERS

Equipment class	Proposed energy conservation standards
Top-loading	1.60 Modified Energy Factor/ 8.5 Water Factor.
Front-loading ..	2.00 Modified Energy Factor/ 5.5 Water Factor.

DOE seeks comment on the proposed standards. This is identified as Issue 7 in section VII.E of today's supplemental notice (Issues on Which DOE Seeks Comment.)

DOE also calculated the annualized values for certain benefits and costs at the various TSLs. Table V.29 shows the annualized values. DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value for the time-series of costs and benefits using a discount rate of either three or seven percent. From the present value, DOE then calculated the fixed annual payment over the analysis time period (2013 to 2043) that yielded the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined are a steady stream of payments.

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Table V.29 Annualized Benefits and Costs for Commercial Clothes Washers

TSL	Category	Unit	Primary Estimate		Low Estimate		High Estimate	
			7%	3%	7%	3%	7%	3%
1	**Benefits**							
	Annualized Monetized ($millions/year)	2008$	12.75	15.32	11.25	13.46	14.63	17.70
	Annualized Quantified	CO_2 (Mt)	0.07	0.07	0.07	0.07	0.07	0.07
		NO_x (kT)	0.041	0.044	0.041	0.044	0.041	0.044
		Hg (T)	0.000	0.000	0.000	0.000	0.000	0.000
	Costs							
	Annualized Monetized ($millions/year)	2008$	11.44	11.06	10.67	10.19	12.01	11.65
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	3.66	6.99	2.93	6.01	4.97	8.79
2	**Benefits**							
	Annualized Monetized ($millions/year)	2008$	13.98	16.79	12.43	14.86	15.90	19.23
	Annualized Quantified	CO_2 (Mt)	0.07	0.07	0.07	0.07	0.07	0.07
		NO_x (kT)	0.042	0.045	0.042	0.045	0.042	0.045
		Hg (T)	0.000	0.000	0.000	0.000	0.000	0.000
	Costs							
	Annualized Monetized ($millions/year)	2008$	11.49	11.11	10.72	10.23	12.06	11.70
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	4.87	8.45	4.09	7.40	6.22	10.30
3	**Benefits**							
	Annualized Monetized ($millions/year)	2008$	60.62	72.82	54.87	65.33	66.59	80.43
	Annualized Quantified	CO_2 (Mt)	0.14	0.16	0.14	0.16	0.14	0.16
		NO_x (kT)	0.087	0.094	0.087	0.094	0.087	0.094
		Hg (T)	0.001	0.001	0.001	0.001	0.001	0.001
	Costs							
	Annualized Monetized ($millions/year)	2008$	23.44	22.67	21.85	20.87	24.61	23.87
	Net Benefits/Costs							
	Annualized	2008$	42.23	56.04	38.07	50.34	47.04	62.44

	Monetized ($millions/year)							
4	**Benefits**							
	Annualized Monetized ($millions/year)	2008$	68.83	82.66	62.65	74.62	75.33	90.94
	Annualized Quantified	CO_2 (Mt)	0.16	0.17	0.16	0.17	0.16	0.17
		NO_x (kT)	0.097	0.105	0.097	0.105	0.097	0.105
		Hg (T)	0.001	0.001	0.001	0.001	0.001	0.001
	Costs							
	Annualized Monetized ($millions/year)	2008$	25.45	24.62	23.81	22.75	26.67	25.87
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	49.01	64.60	44.47	58.43	54.29	71.63
5	**Benefits**							
	Annualized Monetized ($millions/year)	2008$	81.19	97.52	74.46	88.77	88.24	106.51
	Annualized Quantified	CO_2 (Mt)	0.17	0.19	0.17	0.19	0.17	0.19
		NO_x (kT)	0.105	0.113	0.105	0.113	0.105	0.113
		Hg (T)	0.001	0.001	0.001	0.001	0.001	0.001
	Costs							
	Annualized Monetized ($millions/year)	2008$	28.19	27.26	26.47	25.30	29.47	28.57
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	59.08	77.34	54.08	70.55	64.86	85.02

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VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

The Executive Order requires each agency to identify the problem the agency intends to address that warrants new agency action (including, where applicable, the failures of private markets or public institutions), as well as to assess the significance of that problem in evaluating whether any new regulation is warranted. E.O. 12866, section 1(b)(1).

The October 2008 NOPR evaluated the market failure that the proposed rule would address. 73 FR 62034, 62122–23 (Oct. 17, 2008). DOE's analysis for CCWs explicitly quantifies and accounts for the percentage of consumers that already purchase more efficient equipment and takes these consumers into account when determining the national energy savings associated with various TSLs. The analysis suggests that accounting for the market value of energy savings alone (*i.e.,* excluding any possible additional ''externality'' benefits such as those noted below) would produce enough benefits to yield net benefits across a wide array of equipment and circumstances. In the October 2008 NOPR, DOE requested additional data (including the percentage of consumers purchasing more efficient CCWs and the extent to which consumers will continue to purchase more efficient equipment), in order to test the existence and extent of these consumer actions. 73 FR 62034, 62123 (Oct. 17, 2008). DOE received no such data from interested parties in response to the October 2008 NOPR.

DOE believes that there is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the home appliance market. If this is the case, DOE would expect the energy efficiency for CCWs to be randomly distributed across key variables such as

energy prices and usage levels. DOE has estimated the percentage of consumers that already purchase more efficient CCWs. However, DOE does not correlate the consumer's usage pattern and energy price with the efficiency of the purchased equipment. In the October 2008 NOPR, DOE sought data on the efficiency levels of existing CCWs by how often they are used (*e.g.,* how many times or hours the equipment is used) and their associated energy prices (and/or geographic regions of the country). *Id.* DOE received no such data from interested parties in response to the October 2008 NOPR. Therefore, DOE was unable to test for today's supplemental rule the extent to which purchasers of CCWs behave as if they are unaware of the costs associated with their energy consumption.

A related issue is asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services). In many instances, the party responsible for an appliance purchase may not be the one who pays the cost to operate it. For example, home builders in large-scale developments often make decisions about appliances without input from home buyers and do not offer options to upgrade those appliances. Also, apartment owners normally make decisions about appliances, but renters often pay the utility bills. If there were no transactions costs, it would be in the home builders' and apartment owners' interest to install appliances that buyers and renters would choose. For example, one would expect that a renter who knowingly faces higher utility bills from low efficiency appliances would be willing to pay less in rent, and the apartment owner would indirectly bear the higher utility cost. However, this information is not readily available, and it may not be in the renter's interest to take the time to develop it, or, in the case of the landlord who installs a high efficiency appliance, to convey that information to the renter.

To the extent that asymmetric information and/or high transactions costs are problems, one would expect to find certain outcomes for appliance energy efficiency. For example, all things being equal, one would not expect to see higher rents for apartments with high efficiency appliances. Conversely, if there were symmetric information, one would expect appliances with higher energy efficiency in rental units where the rent includes utilities compared to those where the renter pays the utility bills separately. Similarly, for single-family homes, one would expect higher energy efficiency levels for replacement units than for appliances installed in new construction. Within the new construction market, one would expect to see appliances with higher energy efficiency levels in custom-built homes (where the buyer has more say in appliance choices) than in comparable homes built in large-scale developments.

The above issues pertaining to asymmetric information and/or high transaction costs seem to be less relevant to the CCW market. For example, as discussed in section III.D.10, DOE concluded that a split incentive is unlikely between route operators and multi-family property owners. Because split incentives are likely not applicable to the CCW market, the probability that asymmetric information exists where one party (*e.g.,* a route operator) has more and better information than the other (*e.g.,* a multi-family property owner) is low. Further, because DOE received no data from interested parties in response to the October 2008 NOPR on the issue of asymmetric information and/or high transactions costs, DOE was unable to conclusively determine for today's supplemental notice the extent to which asymmetric information and/or high transaction costs are a market failure in the CCW market.

In addition, this rulemaking is likely to yield certain external benefits resulting from improved energy efficiency of CCWs that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases. The TSLs which DOE evaluated resulted in CO_2, NO_X, and Hg emissions reductions. DOE also determined a range of possible monetary benefits associated with the emissions reductions. DOE considered both the emissions reductions and their possible monetary benefit in determining the economic feasibility of the TSLs.

DOE conducted a regulatory impact analysis (RIA) for review by the Office of Information and Regulatory Affairs (OIRA) at OMB. DOE presented to OIRA the draft supplemental notice and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. They are available for public review in the Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–9127, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

The RIA is contained as chapter 17 in the TSD prepared for the rulemaking. The RIA consists of (1) a statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of today's proposed standards. DOE performed an RIA solely for CCWs for today's supplemental notice.

The RIA calculates the effects of feasible policy alternatives to energy conservation standards for CCWs and provides a quantitative comparison of the impacts of the alternatives. DOE evaluated each alternative in terms of its ability to achieve significant energy savings at reasonable costs, and compared it to the effectiveness of today's proposed standards. DOE analyzed these alternatives using a series of regulatory scenarios as input to the NIA spreadsheets for the two equipment classes, which it modified to allow inputs for voluntary measures. For more details on how DOE modified the NIA spreadsheets to determine the impacts due to the various non-regulatory alternatives to standards, refer to chapter 17 of the TSD accompanying this notice.

As shown in Table VI.1 below, DOE identified the following major policy alternatives for achieving increased energy efficiency in conventional CCWs:

(1) No new regulatory action;

(2) Financial incentives;

(3) Consumer rebates;

(4) Consumer tax credits;

(5) Manufacturer tax credits;

(6) Voluntary energy efficiency targets;

(7) Bulk government purchases;

(8) Early replacement; and

(9) Today's proposed approach (national performance and prescriptive standards).

TABLE VI.1—NON-REGULATORY ALTERNATIVES TO COMMERCIAL CLOTHES WASHER STANDARDS

Policy alternatives	Energy savings* (quads)	Water savings (trillion gallons)	Net present value** (billion 2008$)	
			7% Discount rate	3% Discount rate
No new regulatory action	0	0	0	0
Consumer rebates	0.06	0.07	0.18	0.47
Consumer tax credits	0.01	0.01	0.03	0.08
Manufacturer tax credits	0.00	0.01	0.02	0.06
Voluntary energy efficiency targets***	0.02	0.02	0.06	0.15
Early replacement	0.01	0.01	0.11	0.17
Bulk government purchases***	0.00	0.01	0.02	0.04
Today's standards at TSL 3	0.10	0.14	0.36	0.89

* Energy savings are in source quads.
** Net present value is the value in the present of a time series of costs and savings. DOE determined the net present value from 2013 to 2043 in billions of 2008 dollars.
*** Voluntary energy efficiency target and bulk government purchase alternatives are not considered for front-loading washers because the percentage of the market at TSL 3 (today's proposed standard) is well over the market adoption target level that each alternative strives to attain.

The net present value amounts shown in Table VI.1 refer to the NPV for consumers. The costs to the government of each policy (such as rebates or tax credits) are not included in the costs for the NPV since, on balance, consumers would be both paying for (through taxes) and receiving the benefits of the payments. The following paragraphs discuss each of the policy alternatives listed in Table VI.1. (See the chapter 17 of the SNOPR TSD.)

No New Regulatory Action. The case in which no regulatory action is taken with regard to CCWs constitutes the ''base case'' (or ''No Action'') scenario. In this case, between 2013 and 2043, CCWs are expected to use 0.97 quads of primary energy along with 2.2 trillion gallons of water. Since this is the base case, energy savings and NPV are zero by definition.

Consumer Rebates. Consumer rebates cover a portion of the incremental installed cost difference between equipment meeting baseline efficiency levels and those meeting higher efficiency levels, which generally result in a higher percentage of consumers purchasing more efficient models. DOE utilized market penetration curves from a study that analyzed the potential of energy efficiency in California.[42] The penetration curves are a function of benefit-cost ratio (*i.e.,* lifetime operating costs savings divided by increased total installed costs) to estimate the increased market share of more efficient equipment given incentives by a rebate program. Using specific rebate amounts, DOE calculated, for the considered equipment, the benefit-cost ratio of the more efficient appliance with and without the rebate to project the increased market penetration of the equipment due to a rebate program.

For CCWs meeting TSL 3, DOE estimated that the percentage of consumers purchasing the more efficient equipment due to consumer rebates would increase annually by 49.0 percent for top-loading washers and 4.0 percent for front-loading washers. DOE selected the rebate amount using data from rebate programs for CCWs conducted by 24 gas, electric, and water utilities and other agencies. DOE estimated that the impact of this policy would be to permanently transform the market so that the increased market share seen in the first year of the program would be maintained throughout the forecast period. At the estimated participation rates, consumer rebates would be expected to provide 0.06 quads of national energy savings, 74 billion gallons of national water savings, and an NPV of $0.18 billion (at a 7-percent discount rate).

Although DOE estimated that consumer rebates would provide national benefits for CCW consumers, these benefits would be smaller than the benefits resulting from national performance standards at today's proposed levels. Thus, DOE rejected consumer rebates as a policy alternative to national performance standards.

Consumer Tax Credits. Consumer tax credits cover a percentage of the incremental installed cost difference between equipment meeting baseline efficiency levels and those with higher efficiencies. Consumer tax credits are considered a viable non-regulatory market transformation program as evidenced by the inclusion of Federal consumer tax credits in EPACT 2005 for various residential appliances. (Section 1333 of EPACT 2005; codified at 26 U.S.C. 25C) DOE reviewed the market impact of tax credits offered by the Oregon Department of Energy (ODOE) (ODOE, No. 35 at p. 1) and Montana Department of Revenue (MDR) (MDR, No. 36 at p. 1) to estimate the effect of a national tax credit program. To help estimate the impacts from such a program, DOE also reviewed analyses prepared for the California Public Utilities Commission,[43] the Northwest Energy Efficiency Alliance,[44] and the Energy Foundation/Hewlett Foundation.[45] For each the equipment considered for this rulemaking, DOE estimated that the market effect of a tax credit program would gradually increase over a time period until it reached its maximum impact. Once the tax credit program attained its maximum effect, DOE assumed the impact of the policy would be to permanently transform the market at this level.

For CCWs, DOE estimated that consumer tax credits would induce an increase of 1.3 percent in 2013 in the purchase of equipment meeting TSL 3 and eventually increase to a maximum of 5.8 percent in 2020 for both top-loading and front-loading washers.[46] At the estimated participation rates, consumer tax credits would be expected to provide 0.01 quads of national energy

[42] Rufo, M. and F. Coito, *California's Secret Energy Surplus: The Potential for Energy Efficiency* (prepared for The Energy Foundation and The Hewlett Foundation by Xenergy, Inc.) (2002).

[43] Itron and KEMA, *2004/2005 Statewide Residential Retrofit Single-Family Energy Efficiency Rebate Evaluation* (prepared for the California Public Utilities Commission, Pacific Gas And Electric Company, San Diego Gas and Electric Company, Southern California Edison, Southern California Gas Company, CPUC–ID# 1115–04) (2007).

[44] KEMA, *Consumer Product Market Progress Evaluation Report 3* (prepared for Northwest Energy Efficiency Alliance, Report #07–174) (2007).

[45] Rufo, M., and F. Coito, *op. cit.*

[46] Because DOE was not able to identify consumer tax credit programs specific to CCWs, increased market penetrations for residential clothes washers were used to estimate the impact from a tax credit program providing incentives for more efficient CCWs.

savings, 13 billion gallons of national water savings, and an NPV of $0.03 billion (at a 7-percent discount rate).

DOE estimated that while consumer tax credits would yield national benefits for CCW consumers, these benefits would be much smaller than the benefits from today's proposed national performance standards. Thus, DOE rejected consumer tax credits as a policy alternative to national performance standards.

Manufacturer Tax Credits. Manufacturer tax credits are considered a viable non-regulatory market transformation program as evidenced by the inclusion of Federal tax credits in EPACT 2005 for manufacturers of residential appliances. (Section 1334 of EPACT 2005; codified at 26 U.S.C. 45M) Similar to consumer tax credits, manufacturer tax credits would effectively result in lower equipment prices to consumers by an amount that covered part of the incremental price difference between equipment meeting baseline efficiency levels and those meeting higher efficiency levels. Because these tax credits go to manufacturers instead of consumers, research indicates that fewer consumers would be affected by a manufacturer tax credit program than by consumer tax credits.[47] [48] Although consumers would benefit from price reductions passed through to them by the manufacturers, research demonstrates that approximately half the consumers who would benefit from a consumer tax credit program would be aware of the economic benefits of more efficient technologies included in an appliance manufacturer tax credit program. In other words, research estimates that half of the effect from a consumer tax credit program is due to publicly available information or promotions announcing the benefits of the program. This effect, referred to as the ''announcement effect,'' is not part of a manufacturer tax credit program. Therefore, DOE estimated that the effect of a manufacturer tax credit program would be only half of the maximum impact of a consumer tax credit program.

As described earlier in section III.E.2 on the NIA, DOE analyzed the impact of recent Federal manufacturer tax credits on increased sales of high efficiency CCWs. DOE determined that the tax credits have increased the market share of front-loading washers from approximately 20 percent in the year 2005 to its current market share of 30 percent. For purposes of conducting the NIA, DOE estimated that the tax credits would permanently transform the market so that front-loading washers would continue to comprise 30 percent of the market over the entire forecast period, even though the tax credits are set to expire after 2010. For purposes of analyzing the impact of manufacturer tax credits for the RIA, DOE estimated the percentage of consumers purchasing equipment at TSL 3 would be expected to increase by 2.9 percent for both top-loading and front-loading washers. This additional increase of 2.9 percent is relative to the base case (*i.e.,* the case without new efficiency standards) which is comprised of a 30 percent market share of front-loading washers and a 70 percent market share of top-loading washers. DOE assumed that the impact of the manufacturer tax credit policy would be to permanently transform the market so that the increased market share seen in the first year of the program would be maintained throughout the forecast period.

At the above estimated participation rates, manufacturer tax credits would provide 0.005 quads of national energy savings, 9 billion gallons of national water savings, and an NPV of $0.02 billion (at a 7-percent discount rate) for CCWs.

DOE estimated that while manufacturer tax credits would yield national benefits for CCW consumers, these benefits would be much smaller than the benefits from national performance standards. Thus, DOE rejected manufacturer tax credits as a policy alternative to today's proposed national performance standards.

Voluntary Energy Efficiency Targets. DOE estimated the impact of voluntary energy efficiency targets by reviewing the historical and projected market transformation performance of past and current ENERGY STAR programs.

To estimate the impacts from a voluntary energy efficiency program targeting the adoption of top-loading CCWs meeting TSL 3, DOE evaluated the potential impacts of expanding the Federal government's existing ENERGY STAR program for CCWs. DOE modeled the voluntary efficiency program based on the ENERGY STAR program's experience with RCWs.[49] [50] Over the period spanning 2007–2025, ENERGY STAR projected that the market share of RCWs meeting target efficiency levels due to ENERGY STAR will increase to a maximum of 28 percent. DOE estimated that an expanded voluntary program would increase their market share by half of these projected annual amounts for the existing ENERGY STAR program, reaching a maximum of 14 percent increased market share. For CCWs, DOE assumed that the impacts of the existing ENERGY STAR program were already incorporated in the base case, and applied the same pattern of market share increase from an expanded voluntary program to CCWs beginning in 2013. After attaining its maximum market share of 14 percent in the year 2030, DOE's analysis maintained that market share throughout the remainder of the forecast period. DOE estimated that an expanded program of voluntary energy efficiency targets would be expected to provide 0.02 quads of national energy savings, 24 billion gallons of national water savings, and an NPV of $0.06 billion (at a 7-percent discount rate). Although this program would provide national benefits, they were estimated to be smaller than the benefits resulting from today's proposed national performance standards. Thus, DOE rejected the use of voluntary energy efficiency targets as a policy alternative to national performance standards.

DOE did not analyze the potential impacts of voluntary energy efficiency targets for front-loading CCWs because a vast majority of equipment already meets today's proposed standards. In the case of front-loading CCWs, over 96 percent of the market meets TSL 3. The ENERGY STAR program typically targets equipment where a maximum of approximately 25 percent of the existing market meets the target efficiency level.[51] Since the market for front-loading CCWs is well above the 25 percent threshold, DOE did not consider this approach for this equipment class.

Early Replacement. The early replacement policy alternative envisions a program to replace old, inefficient units with models meeting efficiency levels higher than baseline equipment. Under an early replacement program, State governments or electric and gas utilities would provide financial incentives to consumers to retire the appliance early in order to hasten the adoption of more efficient equipment. For all of the considered equipment,

[47] K. Train, *Customer Decision Study: Analysis of Residential Customer Equipment Purchase Decisions* (prepared for Southern California Edison by Cambridge Systematics, Pacific Consulting Services, The Technology Applications Group, and California Survey Research Services) (1994).

[48] Lawrence Berkeley National Laboratory, End-Use Forecasting Group. *Analysis of Tax Credits for Efficient Equipment (1997).* Available at *http://enduse.lbl.gov/Projects/TaxCredits.html.* (Last accessed April 24, 2008.)

[49] Data were not available on the market impacts of the CCW program.

[50] Sanchez *et al., op. cit.*

[51] Sanchez, M. and A. Fanara, ''New Product Development: The Pipeline for Future ENERGY STAR Growth,'' *Proceedings of the 2000 ACEEE Summer Study on Energy Efficiency in Buildings* (2000) Vol 6, pp 343–354.

DOE modeled this policy by applying a 4-percent increase in the replacement rate above the natural rate of replacement for failed equipment. DOE based this percentage increase on program experience with the early replacement of appliances in the State of Connecticut.[52] DOE assumed the program would continue for as long as it would take to ensure that the eligible existing stock in the year that the program began (2013) was completely replaced.

For CCWs, this policy alternative would replace old, inefficient top-loading and front-loading units with models meeting the efficiency levels in TSL 3. DOE estimated that such an early replacement program would be expected to provide 0.01 quads of national energy savings, 9 billion gallons of national water savings, and an NPV of $0.11 billion (at a 7-percent discount rate).

Although DOE estimated that the above early replacement programs for CCWs would provide national benefits, they would be much smaller than the benefits resulting from national performance standards. Thus, DOE rejected early replacement incentives as a policy alternative to national performance standards.

Bulk Government Purchases. Under this policy alternative, the government sector would be encouraged to shift their purchases to equipment that meets the target efficiency levels above baseline levels. Aggregating public sector demand could provide a market signal to manufacturers and vendors that some of their largest customers sought suppliers with equipment that met an efficiency target at favorable prices. This program also could induce ''market pull'' impacts through manufacturers and vendors achieving economies of scale for high-efficiency equipment. Under such a program, DOE would assume that Federal, State, and local government agencies would administer it. At the Federal level, such a program would add more efficient equipment for which the Federal Energy Management Program (FEMP) has energy efficient procurement specifications.

For CCWs, this program would encourage the government sector to shift its purchases to top-loading units that meet the efficiency levels in TSL 3. DOE estimated that this policy would apply to multi-family buildings that are government-owned. Based on a technology review prepared for FEMP by Pacific Northwest National Laboratory (PNNL), approximately 7000 CCWs (representing a 3.2 percent market share) were purchased in the year 2000 for Federal buildings.[53] Based on research of the effectiveness of bulk government purchasing programs, DOE estimated that the market share of more efficient CCWs in Federally owned multi-family buildings would increase at a rate of 8 percent per year over a 10-year period (2013–2022) and remain at the 2022 level for the remainder of the forecast period. DOE estimated that bulk government purchases would be expected to provide 0.003 quads of national energy savings, 7 billion gallons of national water savings, and an NPV of $0.02 billion (at a 7-percent discount rate), benefits which would be much smaller than those estimated for today's proposed national performance standards. Thus, DOE rejected bulk government purchases as a policy alternative to national performance standards.

DOE did not analyze the potential impacts of bulk government purchases for front-loading CCWs because the vast majority of equipment already meets today's proposed standards. In the case of front-loading CCWs, over 96 percent of the market meets TSL 3. FEMP procurement specifications typically promote equipment in the top 25 percent of the existing equipment offerings in terms of efficiency. Since most of the front-loading CCWs sold in the base case already comply with such specifications, DOE was not able to consider this program as a source of data for top-loading CCWs.

National Performance Standards (TSL 3). As indicated in the paragraphs above, none of the alternatives DOE examined would save as much energy as today's proposed energy conservation standards. Therefore, DOE will adopt the efficiency levels listed in section V.C.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE reviewed today's supplemental notice under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 68 FR 7990. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. DOE identified producers of all equipment covered by this rulemaking that have manufacturing facilities located within the United States. DOE then looked at publicly available data and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a small manufacturing facility.

For the manufacturers of equipment covered by this rulemaking, the SBA has set two size thresholds that define which entities are ''small businesses'' for the purposes of the statute. See *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.* Because all CCW manufacturers also produce RCWs, limits for both categories are presented in Table VI.2. DOE used these small business definitions to determine whether any small entities would be required to comply with the rule. (65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (September 5, 2000) and codified at 13 CFR part 121.) The size standards are listed by NAICS code and industry description.

[52] Nexus.and RLW Analytics, *Impact, Process, and Market Study of the Connecticut Appliance Retirement Program: Overall Report, Final.* (Submitted to Northeast Utilities—Connecticut Light and Power and the United Illuminating Company by Nexus Market Research, Inc. and RLW Analytics, Inc.) (2005).

[53] Pacific Northwest National Laboratory, *Assessment of High-Performance, Family-Sized Commercial Clothes Washers* (DOE/EE–0218)(2000).

TABLE VI.2—SBA AND NAICS CLASSIFICATION OF SMALL BUSINESSES POTENTIALLY AFFECTED BY THIS RULE

Industry description	Revenue limit	Employee limit	NAICS
Residential Laundry Equipment Manufacturing	N/A	1,000	335224
Commercial Laundry Equipment Manufacturing	N/A	500	333312

The CCW industry consists of three principal competitors that make up almost 100 percent of the market share. Two of them are high-volume, diversified appliance manufacturers, while the third is a focused laundry equipment manufacturer. Before issuing this SNOPR, DOE interviewed all major CCW manufacturers. Because all CCW manufacturers also make RCWs, DOE also considered whether a CCW manufacturer could be considered a small business entity in that industry. None of the CCW manufacturers fall into any small business category. As a result, DOE certifies that today's SNOPR would not have a significant impact on a substantial number of small entities and that a regulatory flexibility analysis is not required.

C. Review Under the Paperwork Reduction Act

DOE stated in the October 2008 NOPR that this rulemaking would impose no new information and recordkeeping requirements, and that OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 73 FR 62034, 62130 (Oct. 17, 2008). DOE received no comments on this in response to the October 2008 NOPR. Therefore, for today's supplemental notice DOE has concluded that Office of Management and Budget clearance is not required under the PRA.

D. Review Under the National Environmental Policy Act

DOE has prepared a draft environmental assessment (EA) of the impacts of the supplemental notice pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021). This assessment includes an examination of the potential effects of emission reductions likely to result from the rule in the context of global climate change, as well as other types of environmental impacts. The draft EA has been incorporated into the TSD; the environmental impact analyses are contained primarily in chapter 16 of that document. Before issuing a final rule for CCWs, DOE will consider public comments and, as appropriate, determine whether to issue a finding of no significant impact as part of a final EA or to prepare an environmental impact statement (EIS) for this rulemaking.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined today's supplemental notice and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's supplemental notice. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d) and 6316(b)(2)(D)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729 (Feb. 7, 1996)) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, today's supplemental notice meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

DOE reviewed this regulatory action under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), which requires each Federal agency to assess the effects of Federal regulatory actions on State, local and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted for inflation), section 202 of UMRA requires an agency to publish a written statement assessing the costs, benefits, and other effects of the rule on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small

governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). Although today's supplemental notice does not contain a Federal intergovernmental mandate, it may impose expenditures of $100 million or more on the private sector, although DOE believes such expenditures are likely to be less than $50 million.

Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the supplemental notice. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The Supplementary Information section of this supplemental notice and the ''Regulatory Impact Analysis'' section of the SNOPR TSD respond to those requirements.

Under section 205 of UMRA, DOE is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(h) and (o), 6313(e), and 6316(a), today's supplemental notice would establish energy conservation standards for CCWs that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for today's supplemental notice.

H. Review Under the Treasury and General Government Appropriations Act, 1999

DOE determined that, for this rulemaking, it need not prepare a Family Policymaking Assessment under section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277). *Id.* DOE received no comments concerning section 654 in response to the October 2008 NOPR, and, therefore, takes no further action in today's supplemental notice with respect to this provision.

I. Review Under Executive Order 12630

DOE determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that the October 2008 NOPR would not result in any takings which might require compensation under the Fifth Amendment to the U.S. Constitution. 73 FR 62034, 62131 (Oct. 17, 2008). DOE received no comments concerning Executive Order 12630 in response to the October 2008 NOPR, and, today's supplemental notice, which adopts no new requirements, also would not result in any takings which might require compensation under the Fifth Amendment. Therefore, DOE takes no further action in today's supplemental notice with respect to this Executive Order.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. The OMB guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OIRA a Statement of Energy Effects for any significant energy action. For the October 2008 NOPR, DOE determined that the proposed rule, which set energy conservation standards for commercial clothes washers, was not a ''significant energy action'' within the meaning of Executive Order 13211. 73 FR 62034, 62132 (Oct. 17, 2008). The rule was also not designated as such by OIRA. Accordingly, it did not prepare a Statement of Energy Effects on that proposed rule. DOE received no comments on this issue in response to the October 2008 NOPR. As with the October 2008 NOPR, DOE has concluded that today's supplemental notice is not a significant energy action within the meaning of Executive Order 13211, and OIRA has not designated the rule as such. As a result, DOE has not prepared a Statement of Energy Effects on the rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, the OMB, in consultation with the Office of Science and Technology, issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government. As indicated in the October 2008 NOPR, this includes influential scientific information related to agency regulatory actions, such as the analyses in this rulemaking. 73 FR 62034, 62132 (Oct. 17, 2008).

As more fully set forth in the October 2008 NOPR, DOE held formal in-progress peer reviews of the types of analyses and processes that DOE has used to develop the energy conservation standards in today's supplemental notice, and issued a report on these peer reviews. *Id.*

VII. Public Participation

A. Attendance at Public Meeting

DOE will hold a public meeting on November 16, 2009 from 9 a.m. until 5 p.m., in Washington, DC. The public meeting will be held at Room 1E–245. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in this notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a compact disc (CD) in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format to the address shown in the

ADDRESSES section at the beginning of this SNOPR between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or e-mail to: *Brenda.Edwards@ee.doe.gov.*

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons scheduled to be heard to submit an advance copy of their statements at least two weeks before the public meeting. At its discretion, DOE may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Building Technologies Program. The request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA, 42 U.S.C. 6306. A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule before or after the public meeting, but no later than the date provided at the beginning of this SNOPR. Information submitted should be identified by docket number EE–2006–STD–0127 and/or RIN 1904–AB93. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption and, wherever possible, comments should carry the electronic signature of the author. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments and views of interested parties concerning:

(1) Whether the method of ''loading'' clothes washers, or any other characteristic commonly associated with traditional ''top-loading'' or ''front-loading'' clothes washers, are ''features'' within the meaning of 42 U.S.C. 6295(o)(4) in EPCA and whether the availability of such feature(s) would likely be affected by eliminating the separate classes for these equipment types previously established by DOE;

(2) The revised efficiency levels, including the revised max-tech level for top-loading CCWs;

(3) Technological feasibility of the proposed max-tech CCW, including washing and rinsing performance measures for CCWs and population data for water heating CCWs;

(4) The determination of short- and long-run price elasticities of demand and cross price elasticities for top-loading vs. front-loading CCWs and used vs. front-loading CCWs;

(5) The determination of manufacturer impacts, including the effects of manufacturer tax credits and competitive concerns;

(6) The determination of environmental impacts; and

(7) The newly proposed energy conservation standards.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on October 27, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, chapter II, subchapter D, of title 10 of the Code of Federal Regulations, part 431 is proposed to be amended to read as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 431.156 of subpart I is revised to read as follows:

§ 431.156 Energy and water conservation standards and effective dates.

Each CCW manufactured on or after [INSERT DATE 3 YEARS AFTER FINAL RULE **FEDERAL REGISTER** PUBLICATION], shall have a modified energy factor no less than and a water factor no greater than:

Equipment class	Modified energy factor (cu. ft./kWh/cycle)	Water factor (gal./cu. ft./cycle)
Top-Loading	1.60	8.5
Front-Loading ...	2.00	5.5

[The following letter from the Department of Justice will not appear in the Code of Federal Regulations.]

BILLING CODE 6450–01–P

DEPARTMENT OF JUSTICE
Antitrust Division

DEBORAH A. GARZA
Acting Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202) 514-2401 / (202) 616-2645 (Fax)
E-mail: antitrust@usdoj.gov
Web site: http://www.usdoj.gov/atr

December 16, 2008

Warren Belmar, Esq.
Deputy General Counsel for Energy Policy
Department of Energy
Washington, DC 20585

Dear Deputy General Counsel Belmar:

I am responding to your October 1, 2008, letter seeking the views of the Attorney General about the potential impact on competition of proposed amended energy conservation standards for residential kitchen ranges and ovens, microwave ovens, and commercial clothes washers (CCWs). Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended, ("ECPA"), 42 U.S.C. § 6295(o)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g).

In conducting its analysis the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, leaving consumers with fewer competitive alternatives, placing certain manufacturers of a product at an unjustified competitive disadvantage compared to other manufacturers, or by inducing avoidable inefficiencies in production or distribution of particular products.

We have reviewed the proposed standards contained in the Notice of Proposed Rulemaking (73 Fed. Reg. 62034, October 17, 2008) and supplementary information submitted to the Attorney General. We also attended the November 13 public meeting on the proposed standards and conducted interviews with industry members. Based on this review, we have determined that legitimate issues arise as to whether the proposed standards adversely effect competition and consumer choice with respect to (1) gas cooking products with standing pilot lights and (2) top loading CCWs.

The proposed standards would extend the ban on constant burning pilot lights, currently applicable to cooking appliances equipped with electrical supply cords, to appliances that are not

Warren Belmar, Esq.
December 16, 2008
Page 2

equipped with electrical supply cords. As the notice regarding the proposed standards recognizes, certain consumers, including those with religious and cultural practices that prohibit the use of line electricity, those without access to line electricity, and those whose kitchens do not have appropriate electrical outlets, rely on gas cooking appliances with standing pilots in lieu of electrical ignition devices. For these consumers, gas cooking appliances with electronic ignition are not a reasonable substitute. The notice states that gas cooking appliances may become available with technological options such as battery-powered ignition to replace a standing pilot light. However, it is unclear whether such battery-powered devices have been tested for indoor use and whether they are in compliance with safety standards for such use. If these options prove not to be feasible, then the proposed standard could substantially limit consumer choice by eliminating the cooking appliance that most closely meets these consumers' needs.

As to top loading CCWs, it appears that meeting the proposed standards may require substantial investment in the development of new technology that some suppliers of top loading CCWs may not find it economical to make. CCWs are used primarily in multi-housing laundries, with top loading machines accounting for approximately 80 percent of machines in these locations. The remaining 20 percent are front loading machines, which are more energy efficient but significantly more expensive than top loading models. There are only three manufacturers of top loading CCWs selling in the United States. It appears that there is a real risk that one or more of these manufacturers cannot meet the proposed standard. In such a case, CCW purchasers would have fewer competitive alternatives for top loading machines, potentially resulting in purchasers facing higher prices from the remaining top loading manufacturer or manufacturers.

Although the Department of Justice is not in a position to judge whether manufacturers will be able to meet the proposed standards, we urge the Department of Energy to take into account these possible impacts on competition and the availability of options to consumers in determining its final energy efficiency standard for CCWs and residential gas cooking appliances with constant burning pilots. To maintain competition, the Department of Energy should consider keeping the existing standard in place for top loading CCWs. The Department of Energy may wish to consider setting a "no standard" standard for residential gas cooking products with constant burning pilots to address the potential for certain customers to be stranded without an economical product alternative.

The Department of Justice does not believe that the proposed standards for other products listed in the NOPR would likely lead to an adverse effect on competition.

Sincerely,

Deborah Garza

Deborah A. Garza

[FR Doc. E9–26544 Filed 11–2–09; 4:15 pm]
BILLING CODE 6450–01–C

Federal Register

Monday,
November 9, 2009

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R9-ES-2009-0075; MO-9221050083–B2]

Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this Candidate Notice of Review (CNOR), we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species native to the United States that we regard as candidates for or have proposed for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing landowners and resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in more options for species management and recovery by prompting candidate conservation measures to alleviate threats to the species.

The CNOR summarizes the status and threats that we evaluated in order to determine that species qualify as candidates and to assign a listing priority number (LPN) to each species, or to remove species from candidate status. Additional material that we relied on is available in the Species Assessment and Listing Priority Assignment Forms (species assessment forms, previously called candidate forms) for each candidate species.

Overall, this CNOR recognizes five new candidates, changes the LPN for eight candidates, and removes four species from candidate status. Combined with other decisions for individual species that were published separately from this CNOR in the past year, the current number of species that are candidates for listing is 249.

This document also includes our findings on resubmitted petitions and describes our progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the period October 1, 2008, through September 30, 2009.

We request additional status information that may be available for the 249 candidate species identified in this CNOR.

DATES: We will accept information on this Candidate Notice of Review at any time.

ADDRESSES: This notice is available on the Internet at *http://www.regulations.gov*, and *http://endangered.fws.gov/candidates/index.html*. Species assessment forms with information and references on a particular candidate species' range, status, habitat needs, and listing priority assignment are available for review at the appropriate Regional Office listed below in **SUPPLEMENTARY INFORMATION** or at the Branch of Candidate Conservation, Arlington, VA (see address below), or on our Internet website (*http://endangered.fws.gov/candidates/index.html*). Please submit any new information, materials, comments, or questions of a general nature on this notice to the Arlington, VA, address listed below. Please submit any new information, materials, comments, or questions pertaining to a particular species to the address of the Endangered Species Coordinator in the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: The Endangered Species Coordinator(s) in the appropriate Regional Office(s) or Chief, Branch of Candidate Conservation, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (telephone 703-358-2171; facsimile 703-358-1735). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION: We request additional status information that may be available for any of the candidate species identified in this CNOR. We will consider this information in preparing listing documents and future revisions to the notice of review, as it will help us in monitoring changes in the status of candidate species and in management for conserving them. We also request information on additional species to consider including as candidates as we prepare future updates of this notice.

You may submit your information concerning this notice in general or for any of the species included in this notice by one of the methods listed in the **ADDRESSES** section.

Species-specific information and materials we receive will be available for public inspection by appointment, during normal business hours, at the appropriate Regional Office listed below in under **Request for Information** in **SUPPLEMENTARY INFORMATION**. General information we receive will be available at the Branch of Candidate Conservation, Arlington, VA (see address above).

Candidate Notice of Review

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. As defined in section 3 of the Act, an endangered species is any species which is in danger of extinction throughout all or a significant portion of its range, and a threatened species is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Through the Federal rulemaking process, we add species that meet these definitions to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered and Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher priority listing actions. A species may be indentified by us as a candidate for listing based on an evaluation of its status that we conducted on our own initiative, or as a result of making a finding on a petition to list a species that listing is warranted but precluded by other higher priority listing action (see the Petition Findings section, below).

We maintain this list of candidates for a variety of reasons: to notify the public that these species are facing threats to their survival; to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to provide information that may stimulate and guide conservation efforts that will remove or reduce threats to these species and possibly make listing unnecessary; to request input from interested parties to help us identify those candidate species that may not require protection under the Act or additional species that may require the Act's protections; and to request

necessary information for setting priorities for preparing listing proposals. We strongly encourage collaborative conservation efforts for candidate species and offer technical and financial assistance to facilitate such efforts. For additional information regarding such assistance, please contact the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION** or visit our Internet website, *http://endangered.fws.gov/candidates/index.html*.

Previous Notices of Review

We have been publishing candidate notices of review (CNOR) since 1975. The most recent CNOR (prior to this CNOR) was published on December 10, 2008 (73 FR 75176). CNORs published since 1994 are available on our Internet website, *http://www.fws.gov/endangered/candidates/index.html*. For copies of CNORs published prior to 1994, please contact the Branch of Candidate Conservation (see **ADDRESSES** section above).

On September 21, 1983, we published guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats, immediacy of threats, and taxonomic status; the lower the LPN, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Guidelines for such a priority-ranking guidance system is required under section 4(h)(3) of the Act (15 U.S.C. 1533(h)(3)). As explained below, in using this system we first categorize based on the magnitude of the threat(s), then by the immediacy of the threat(s), and finally by taxonomic status.

Under this priority-ranking system, magnitude of threat can be either ''high'' or ''moderate to low.'' This criterion helps ensure that the species facing the greatest threats to their continued existence receive the highest listing priority. It is important to recognize that all candidate species face threats to their continued existence, so the magnitude of threats is in relative terms. When evaluating the magnitude of the threat(s) facing the species, we consider information such as: the number of populations and/or extent of range of the species affected by the threat(s); the biological significance of the affected population(s), taking into consideration the life-history characteristics of the species and its current abundance and distribution; whether the threats affect the species in only a portion of its range, and if so the likelihood of persistence of the species in the unaffected portions; and whether the effects are likely to be permanent.

As used in our priority-ranking system, immediacy of threat is categorized as either ''imminent'' or ''nonimminent'' and is not a measure of how quickly the species is likely to become extinct if the threats are not addressed; rather, immediacy is based on when the threats will begin. If a threat is currently occurring or likely to occur in the very near future, we classify the threat as imminent. Determining the immediacy of threats helps ensure that species facing actual, identifiable threats are given priority for listing proposals over those for which threats are only potential or species that are intrinsically vulnerable to certain types of threats but are not known to be presently facing such threats.

Our priority ranking system has three categories for taxonomic status: species that are the sole members of a genus; full species (in genera that have more than one species); and subspecies and distinct population segments of vertebrate species. We also apply this last category to species that are threatened or endangered in only significant portions of their ranges rather than their entire ranges.

The result of the ranking system is that we assign each candidate a listing priority number of 1 to 12. For example, if the threat(s) is of high magnitude, with immediacy classified as imminent, the listable entity is assigned an LPN of 1, 2, or 3 based on its taxonomic status (i.e., a species that is the only member of its genus would be assigned to the LPN 1 category, a full species to LPN 2, and a subspecies, DPS, or a species that is threatened or endangered in only a significant portion of its range would be assigned to LPN 3). In summary, the LPN ranking system provides a basis for making decisions about the relative priority for preparing a proposed rule to list a given species. No matter which LPN we assign to a species, each species included in this notice as a candidate is one for which we have sufficient information to prepare a proposed rule to list it because it is in danger of extinction or likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

For more information on the process and standards used in assigning LPNs, a copy of the guidance is available on our website at: *http://www.fws.gov/endangered/policy/index.html*. For more information on the LPN assigned to a particular species, the species assessment for each candidate contains the LPN chart and a rationale for the determination of the magnitude and imminence of threat(s) and assignment of the LPN; that information is summarized in this CNOR.

This revised notice supersedes all previous animal, plant, and combined candidate notices of review.

Summary of This CNOR

Since publication of the CNOR on December 10, 2008 (73 FR 75176), we reviewed the available information on candidate species to ensure that a proposed listing is justified for each species, and reevaluated the relative LPN assigned to each species. We also evaluated the need to emergency-list any of these species, particularly species with high priorities (i.e., species with LPNs of 1, 2, or 3). This review and reevaluation ensures that we focus conservation efforts on those species at greatest risk first.

In addition to reviewing candidate species since publication of the last CNOR, we have worked on numerous findings in response to petitions to list species, and on proposed and final determinations for rules to list species under the Act. Some of these findings and determinations have been completed and published in the **Federal Register**, while work on others is still under way (see *Preclusion and Expeditious Progress*, below, for details).

Based on our review of the best available scientific and commercial information, with this CNOR we identify five new candidate species (see *New Candidates*, below), change the LPN for eight candidates (see *Listing Priority Changes in Candidates*, below) and determine that listing proposals are not warranted for four species and thus remove them from candidate status (see *Candidate Removals*, below). Combined with the other decisions published separately from this CNOR for individual species that previously were candidates, a total of 249 species (including 110 plant and 139 animal species) are now candidates awaiting preparation of rules proposing their listing. These 249 species, along with the 56 species currently proposed for listing (includes 1 species proposed for listing due to similarity in appearance), are included in Table 1.

Table 2 lists the changes from the previous CNOR, and includes five species identified in the previous CNOR as either proposed for listing or classified as candidates that are no longer in those categories. This includes one species for which we published a final rule to list, plus the four species that we have determined do not warrant preparation of a rule to propose listing and therefore have been removed from candidate status in this CNOR.

New Candidates

Below we present a brief summary of one new mammal, one new fish, one new mussel, and two new plant candidates, which we are recognizing in this CNOR. Complete information, including references, can be found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from our Internet website (*http://endangered.fws.gov/candidates/index.html*). For these species, we find that we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but that preparation and publication of a proposal is precluded by higher priority listing actions (i.e., it met our definition of a candidate species). We also note below that three other species, yellow-billed loon, roundtail chub (Lower Colorado River Basin population), and *Astragalus anserinus* (Goose Creek milkvetch) were identified as candidates earlier this year as a result of a separate petition findings published in the **Federal Register**.

Mammals

Florida bonneted bat (*Eumops floridanus*) – The following summary is based on information in our files. Endemic to south Florida, this species is known to occur at 12 locations, 5 on private land and 7 on public land. The entire population may number less than a few hundred individuals. Recent results from a rangewide acoustical survey found a small number of locations where calls were recorded, and low numbers of calls were recorded at each location. Few active roost sites are known; all are artificial (i.e., bat houses).

Occurrences are threatened by loss and conversion of habitat to other uses and habitat alteration (e.g., removal of old trees with cavities, removal of manmade structures with suitable roosting sites); this threat is expected to continue and increase. Although occurrences on conservation lands are inherently more protected than those on private lands, habitat alteration during management practices may affect natural roosting sites even on conservation lands because the locations of any such sites are unknown. Therefore, occupied and potential habitat on forested or wooded lands, both private and public, continues to be at risk. The species is vulnerable to a wide array of natural and human factors: low population size, restricted range, low fecundity, distance between occupied locations, and small number of occupied locations. Such factors may make recolonization unlikely if any site is extirpated and make the species vulnerable to extinction due to genetic drift, inbreeding depression, extreme weather events, and random or chance changes to the environment. Where the species occurs in or near human dwellings or structures, it is at risk to persecution, removal, and disturbance. Disturbance from humans, either intentional or inadvertent, can occur at any of the occurrences of this bat on either private or conservation lands. Disturbance of maternity roosts is of particular concern due to this species' low fecundity and small population. Pesticide applications may be affecting its foraging base, especially in coastal areas.

Due to its overall vulnerability, intense hurricanes are a significant threat; this threat is expected to continue or increase in the future. Intense storms can cause mortality during the storm, exposure to predation immediately following the storm, loss of roost sites, impacts on foraging areas and insect abundance, and disruption of the maternal period. Although disease is a significant threat for other bat species, it is not known to be a threat for the Florida bonneted bat at this time. The protection currently afforded the Florida bonneted bat is limited, provides little protection to the species' occupied habitat, and includes no provisions to protect suitable but unoccupied habitat within the vicinity of known colony sites. Overall, we find the magnitude of threats is high due to the severity of the threats on this species. We find that most of the threats are currently occurring and, consequently, overall, threats are imminent. Therefore, we assigned an LPN of 2 to this species.

Birds

Yellow-billed loon (*Gavia adamsii*) – We previously announced candidate status for this species in a separate warranted-but-precluded 12–month petition finding published on March 25, 2009 (74 FR 12931). Also, see summary below under ''**Petition Findings**.''

Fishes

Roundtail chub (Lower Colorado River Basin DPS) (*Gila robusta*) – We previously announced candidate status for this species in a separate warranted-but-precluded 12–month petition finding published on July 7, 2009 (74 FR 32351).

Diamond darter (*Crystallaria cincotta*) – The following summary is based on information contained in our files. The diamond darter is a member of the Perch family (Percidae) that is generally translucent with silvery white on the ventral side of the body and head and has four wide olive-brown saddles on the back and upper side. The fish generally grows to between 73 to 77.3 millimeters (2.9 – 3.0 inches) in standard length. The species is a benthic invertivore (feeds on invertebrates) that inhabits moderate to large warm-water streams with moderate current and clean sand and gravel substrates.

Historical records indicate that the diamond darter was distributed throughout the Ohio River Basin and that the range included the Muskingum River, Ohio; the Ohio River, Ohio; the Green River, Kentucky; and the Cumberland River Drainage, Kentucky and Tennessee. The species is currently only known to exist within a 36-kilometer (km) (22.4-mile (mi)) section of the lower Elk River in Kanawha and Clay Counties, West Virginia, and is considered extirpated from the remainder of the Ohio River Basin. Survey results and independent publications indicate that the diamond darter is very rare and that the remaining population within the Elk River is likely very small. Despite repeated and targeted survey efforts within the species' known range and preferred habitat in the Elk River, only 18 individuals have been collected in the last 29 years.

The primary threats to the diamond darter are related to the present or threatened destruction, modification, or curtailment of its habitat or range. The Elk River Watershed is threatened with ongoing water-quality degradation and habitat loss from activities such as coal mining, oil and gas development, siltation from these and other sources, and inadequate sewage and wastewater treatment. The impoundment of rivers in the Ohio River Basin, such as the Kanawha, Ohio, and Cumberland, has eliminated much of the species' habitat and isolated the existing population from other watersheds that the species historically occupied. Invasive species have the potential to affect the Elk River and diamond darter habitat. The small size and restricted range of the remaining diamond darter population make it particularly susceptible to the effects of genetic inbreeding, as well as potential extirpation from spills and other catastrophic events. The species is vulnerable to overutilization for scientific purposes; however, the significance of this threat has been reduced and can be further minimized through the administration of existing scientific collecting permit procedures. Existing Federal and State regulatory mechanisms do not currently provide protections for the species or its habitat.

The threats to the diamond darter are high in magnitude, in that the entire current range of the species is potentially affected, and the effects of the threats severely affect the reproductive capacity and can result in total mortality. The threats to the species are imminent and ongoing. Activities that pose a threat to the species already exist within the watershed and are expected to continue. Based on imminent threats of a high magnitude, we assigned an LPN of 2 to this species.

Clams

Rabbitsfoot (*Quadrula cylindrica cylindrical*) – The following summary is based on information in our files. The rabbitsfoot is a freshwater mussel native to Alabama, Arkansas, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee, and West Virginia. The species has disappeared from 5 of 6 rivers in the Lower Great Lakes sub-basin, 47 of 64 rivers in the Ohio River system, 10 of 12 rivers in the Cumberland River basin, 14 of 19 rivers in the Tennessee River system, 2 of 5 rivers in the Lower Mississippi River sub-basin, 3 of 12 rivers in the White River system, 4 of 8 rivers in the Arkansas River system, and 4 of 11 rivers in the Red River system, representing approximately a 65-percent decline of its range. Total range reduction (river miles) and overall population loss for the rabbitsfoot may approach, if not exceed, 90 percent. Of the 49 extant populations, 10 populations are considered to be viable in the longterm.

Population declines continue in most of the species' range, and numerous threats, including water-quality degradation, loss of stable substrates, sedimentation, channelization, gravel mining, dredging, and impoundments, are affecting the few remaining sustainable extant populations. The small size of most of the remaining rabbitsfoot populations exacerbates the threats and adverse effects of chance events to rabbitsfoot.

Threats to the continued existence of rabbitsfoot include exotic species, especially zebra mussels; delivery and deposition of fine sediments; small population sizes; isolation of populations; livestock grazing; wastewater effluents; mine runoff; unstable and coldwater flows downstream of dams; gravel mining; and channel dredging. In addition, the rabbitsfoot, like many other fresh-water mussels, requires a fish host to transport it larvae, and the fish host of rabbitsfoot is unknown for the eastern portion of its range; thus, artificial propagation of the rabbitsfoot to reestablish the species in restored habitats and to maintain non-reproducing populations is not possible, nor is focused conservation of its fish host. Although there are ongoing attempts to alleviate some of these threats at some locations, there appear to be no populations without significant threats and many threats are without obvious or readily available solutions. The threats described above have led to the species being intrinsically vulnerable to extirpation.

Due to the number of extant populations and relatively broad distribution, the threats to rabbitsfoot are of moderate magnitude. Although some of the threats are nonimminent, most are ongoing and, therefore, overall, the threats are imminent. Thus, we assigned an LPN of 9 to this subspecies.

Flowering Plants

Astragalus anserinus (Goose Creek milkvetch) – We previously announced candidate status for this species in a separate warranted-but-precluded 12–month petition finding published on September 10, 2009 (74 FR 46521).

Leavenworthia exigua var. *laciniata* (Kentucky gladecress) – The following summary is based on information in our files. Kentucky gladecress is a winter annual that is adapted to environments with shallow soils interspersed with flat-bedded limestones. The natural habitat for Kentucky gladecress is cedar glades, but the variety is also known from overgrazed pastures, eroded shallow-soil areas with exposed bedrock, and areas where the soil has been scraped off the underlying bedrock. The variety does not appear to compete well with other vegetation and is shade intolerant. Currently, there are approximately 55 occurrences in Jefferson and Bullitt Counties, Kentucky, but at least 39 of these occurrences are of poor quality with low numbers of plants and degraded conditions.

Populations of this variety are now located primarily in modified habitats such as pastureland, roadside rights of way, and cultivated or plowed fields. These populations are threatened by further habitat destruction (conversion from rural to residential land use), herbicide use, overgrazing, and competition. Some populations continue to occupy natural glade habitats, but these habitats are remnant in nature and continue to be affected by agricultural and residential conversion. The variety's primary threat, habitat destruction due to residential and commercial development, is widespread and has the potential to affect the entire range of the variety. The effects of the threat are also permanent. Therefore, these threats are high in magnitude. These threats are imminent because the conversion from rural to residential land use is ongoing. Consequently, we assigned an LPN of 3 to this plant variety.

Ferns and Allies

Trichomanes punctatum ssp. *floridanum* (Florida bristle fern) – The following summary is based on information in our files. The Florida bristle fern has been reduced to four, or possibly five, small, isolated occurrences: Three occur in Miami-Dade County and two in Sumter County. In Miami-Dade County, it has been found exclusively in solution holes in oolitic limestone and rocky outcrops in rockland hammocks. In Sumter County, plants occur in a mesic/hydric hammock on shaded limestone boulders.

Most sites where Florida bristle fern once occurred in Miami-Dade County have been lost; few rockland hammocks remains outside of Everglades National Park. Impacts from regional water drainage in Miami-Dade County are severe, and currently occurring. Regional drainage in remaining habitat has probably been a stressor that has contributed to extirpations and population declines. Resulting drops in ambient humidity in the habitat may limit reproduction and health of populations over the longterm. Such changes in humidity may cause extirpations or make plants more vulnerable to other stressors (e.g., periodic long-term droughts, hurricanes). Climatic changes and sea-level rise are future, long term threats that are expected to affect habitat and ultimately reduce the extent of available habitat in Miami-Dade County. Agricultural conversion and development are currently occurring in Sumter County, placing any undocumented occurrences and suitable habitat at risk. Since a full survey of suitable habitats for the Florida bristle fern has never been conducted in Sumter County, we cannot determine the full extent of losses of this species due to habitat destruction and modification. All known extant occurrences are located on conservation lands; however, there is potential, especially in Sumter County, for the species to occur on private lands. Together, the extant occurrences contain fewer than 1,000 plants. Many plants are probably clones, so there may be limited genetic diversity within sites. Because there are few occurrences, populations contain few plants, and

genetic variability is low, the species is inherently at risk due to stochastic events. Droughts, tropical storms, and hurricanes are threats; Hurricane Andrew may have played a role in the extirpation of the species from two sites. Since there are few occurrences remaining, the species is threatened with extinction during these events. Invasive exotic plants are also a threat, but may be reduced due to active programs by Miami-Dade County and the State. The extent to which fungus is a threat to wild populations is unknown. Overall, the magnitude of threats is high, and most threats are occurring and are, therefore, imminent. Consequently, we assigned this subspecies an LPN of 3.

Listing Priority Changes in Candidates

We reviewed the LPN for all candidate species and are changing the numbers for the following species discussed below. Some of the changes reflect actual changes in either the magnitude or imminence of the threats. For some species, the LPN change reflects efforts to ensure national consistency as well as closer adherence to the 1983 guidelines in assigning these numbers, rather than an actual change in the nature of the threats.

Birds

Elfin-woods warbler (*Dendroica angelae*) – The elfin-woods warbler is a small entirely black and white warbler, distinguished by its white eyebrow stripe, white patches on ear covers and neck, incomplete eye ring, and black crown. The elfin-woods warbler was at first thought to occur only in the high-elevation dwarf or elfin forests of Puerto Rico, but has since been found at lower elevations including shade coffee plantations and secondary forests. This species builds a compact cup nest, usually close to the trunk and well hidden among the epiphytes of a small tree, and its breeding season extends from March to June. It forages in the middle part of trees, gleaning insects from leaves in the outer portion of the tree crown. The elfin-woods warbler has been documented from four locations in Puerto Rico: Luquillo Mountains, Sierra de Cayey, and the Commonwealth forests of Maricao and Toro Negro. However, it has not been recorded again in Toro Negro and Cayey since the passing of Hurricane Hugo in 1989. In 2003 and 2004, surveys were conducted for the elfin-woods warbler in the Carite Commonwealth Forest, Toro Negro Forest, Guilarte Forest, Bosque del Pueblo, Maricao Forest and the El Yunque National Forest (Luquillo Mountains), but the species was detected only in the latter two. In the Maricao Commonwealth Forest, 778 elfin-woods warblers were recorded, and in the El Yunque National Forest, 196 were recorded.

The elfin-woods warbler is threatened by habitat modification. Destruction of elfin forest and *Podocarpus* forest by the installation of infrastructure (telecommunication towers and recreational facilities) threatens the long-term survival of this species. Loss of this type of habitat has been curtailed but potential for loss still exists due to Commonwealth agencies other than Department of Natural and Environmental Resources potentially installing these structures. Furthermore, restoration of this habitat would take a few decades to complete. Present regulatory processes, both Commonwealth and Federal, promote the protection of these areas. Conversion of elfin-woods warbler habitat of better quality (e.g., mature secondary forests, young secondary forests, and shade-coffee plantations) along the periphery of the Maricao Commonwealth Forest to marginal habitat (e.g., pastures, dry slope forests, residential rural forests, gallery forests, and sun-coffee plantations) may result in ineffective corridors for dispersal and expansion of the elfin-woods warbler. Although there is an effort to restore sun-coffee plantations to shade-coffee habitat, other habitats adjacent to the Maricao Forest may still be affected by residential development. We previously assessed the LPN as a 5 (high magnitude, nonimminent threats). Our analysis of the five listing factors revealed that only factors A and D applied to the species. Although habitat modification is occurring, it is limited, as the species is found mostly on protected lands managed by the Commonwealth and Federal agencies. We found no indication that the two populations of elfin-woods warbler are declining in numbers. We also found that the species can thrive in disturbed and plantation habitats, and rebounds and recovers well, in a relatively short time, from the damaging effects of hurricanes to the forest structure. Therefore, we have determined that the magnitude of threats is moderate to low because the severity of the threats on the species is not as great as we previously believed and most of the range of the elfin-woods warbler is within protected lands. The threats are not currently occurring in most of the warbler's habitat; therefore, the threats are nonimminent. As a result, we have changed the LPN from a 5 to an 11 for this species.

Fish

Pearl darter (*Percina aurora*) – Little is known about the specific habitat requirements or natural history of the Pearl darter. Pearl darters have been collected from rivers and streams with a variety of attributes, but are mainly found over gravel-bottom substrate. This species is historically known only from localized sites within the Pascagoula and Pearl River drainages in two States. Currently, the Pearl darter is considered extirpated from the Pearl River drainage and rare in the Pascagoula River drainage. Since 1983, the range of the Pearl darter has decreased by 55 percent.

The Pearl darter is vulnerable to non-point source pollution caused by urbanization and other land use activities; gravel mining and resultant changes in river geomorphology, especially head cutting; and the possibility of water reductions casused by the proposed Department of Energy Strategic Petroleum Reserve project and a proposed dam on the Bouie River. Additional threats are posed by the apparent lack of adequate State and Federal water-quality regulations due to the continuing degradation of water quality within the species' habitat. The pearl darter's localized distribution and apparent low population numbers may indicate a species with lower genetic diversity and would also make this species more vulnerable to catastrophic events. Reevaluation of the threats affecting the pearl darter has indicated that a change in the Listing Priority Number is warranted. Threats affecting the pearl darter are localized in nature, affecting portions of the population within the drainage. Thus, a threat magnitude of moderate to low is a more appropriate category in this situation. In addition, since the identified threats are currently affecting this species in these portions of its range, the threats are imminent. Therefore, we have changed the LPN from a 5 to an 8 to reflect this reevaluation.

Clams

Neosho mucket (*Lampsilis rafinesqueana*) – The Neosho mucket is a freshwater mussel native to Arkansas, Kansas, Missouri, and Oklahoma. The species has been extirpated from approximately 62 percent (835 river miles) of its range, primarily in Kansas and Oklahoma. The Neosho mucket survives in four river drainages, however, only one of these, the Spring River, currently supports a relatively large population.

Significant portions of the historical range have been inundated by the

construction of at least 11 dams. Channel instability downstream of these dams has further reduced suitable habitat and mussel distribution. Range restriction and population declines have occurred due to habitat degradation attributed to urbanization, impoundments, mining, sedimentation, and agricultural pollutants. Rapid development and urbanization in the Illinois River watershed will likely continue to increase channel instability, sedimentation, and eutrophication to this river. The rapid collapse of the entire mussel community, including Neosho mucket, since 2005 in the Arkansas portion of the Illinois River threatens to extirpate the species from approximately 30 river miles in the very near future. The Illinois River once represented one of the two viable populations, but continued viability of this stream population is doubtful and extirpation is imminent. The remaining extant populations are vulnerable to random catastrophic events (e.g., flood scour, drought, toxic spills), land-use changes within the limited range, and genetic isolation and the deleterious effects of inbreeding. These threats have led to the species being intrinsically vulnerable to extirpation. Although State regulations limit harvest of this species, there is little protection for habitat. The threats are high in magnitude because of their severity on this species, and they occur throughout the range. The majority of the threats are ongoing and thus imminent. Thus, we changed the LPN from a 5 to a 2 for this species.

Insects

Miami blue butterfly (*Cyclargus thomasi bethunebakeri*) – The Miami blue is endemic to south Florida. Historically, it occurred throughout the Florida Keys, north to Hillsborough and Volusia Counties. It is presently located at two sites in the Keys. In 1999, a metapopulation was discovered at Bahia Honda State Park (BHSP) on Bahia Honda Key and in 2006 a second metapopulation was discovered on the outer islands of Key West National Wildlife Refuge (KWNWR). The BHSP metapopulation appears restricted to a couple hundred individuals at most; the KWNWR metapopulation was believed to be several hundred in 2006-2007, but appears to be lower in abundance now. Capacity to expand at either site or successfully emigrate from either site appears to be very low due to the sedentary nature of the butterfly and isolation of habitats. Reintroduction efforts have not been successful. The Miami blue is predominantly a coastal species, occurring in disturbed and early successional habitats such as the edges of tropical hardwood hammock, coastal berm forest, and along trails and other open sunny areas, and historically in pine rocklands. These habitats provide host plants for larvae and nectar sources for adults in close proximity, as the species requires.

Major threats to the butterfly include few occurrences, limited population size and range, hurricanes, mosquito control activities, and herbivory of hostplants by iguanas. Damage to hostplants from iguanas at BHSP is a new, ongoing, significant threat; although active steps are being taken by the State, this metapopulation is now at risk. Climatic changes and sea-level rise are long-term threats that will reduce the extent of habitat. Accidental harm or habitat destruction and illegal collection may also pose threats to the survival due to small population sizes. Loss of genetic diversity within the small and isolated populations may be occurring. The survival of the Miami blue depends on protecting the species' currently occupied habitat from further degradation and fragmentation; restoring potentially suitable habitat within its historical range; avoiding or removing threats from fire suppression, mosquito control, and accidental harm from humans; increasing the current population in size; and establishing populations at other locations. The threats are high in magnitude and constitute a significant risk to the subspecies. Given that the new threat from iguanas and other threats (hurricanes, few occurrences, and small population size) are ongoing, the threats are imminent. Therefore, we changed the LPN from a 6 to a 3.

Flowering plants

Helianthus verticillatus (whorled sunflower) – The whorled sunflower is found in moist, prairie-like openings in woodlands and along adjacent creeks. Despite extensive surveys throughout its range, only five populations are known for this species. There are two populations documented for Cherokee County, Alabama; one population in Floyd County, Georgia; and one population each in Madison and McNairy Counties, Tennessee. This species appears to have restricted ecological requirements and is dependent upon the maintenance of prairie-like openings for its survival. Active management of habitat is needed to keep competition and shading under control. Much of its habitat has been degraded or destroyed for agricultural, silvicultural, and residential purposes. Populations near roadsides or powerlines are threatened by herbicide usage in association with right-of-way maintenance. The majority of the Georgia population is protected due to its location within a conservation easement area; however, only 15 to 20 plants are estimated to occur at this site. The remaining four sites are not formally protected, but efforts have been taken to abate threats associated with highway right-of-way maintenance at one Alabama population; and, despite past concerns about threats from timber removal degrading *H. verticillatus* habitat, the other Alabama population has responded favorably to canopy removal that took place circa 2001. Because of this, the threats are of moderate magnitude. The threats are currently occurring, and therefore imminent. To help ensure consistency in the application of our listing priority process, we changed the LPN from a 5 to an 8 for this species.

Lesquerella globosa (Short's bladderpod) – Short's bladderpod is a perennial member of the mustard family that occurs in Indiana (1 location), Kentucky (6 locations), and Tennessee (22 locations). It grows on steep, rocky, wooded slopes; talus areas, along cliff tops and bases; and on cliff ledges. It is usually associated with south-to-west-facing calcareous outcrops adjacent to rivers or streams. Road construction and road maintenance have played a significant role in the decline of *L. globosa*. Specific activities that have affected the species in the past and continue to threaten it include bank stabilization, herbicide use, mowing during the growing season, grading of road shoulders, and road widening or repaving. Sediment deposition during road maintenance or from other activities also potentially threatens the species. Because the natural processes that maintained habitat suitability and competition from invasive nonnative vegetation have been interrupted at many locations, active habitat management is necessary at those sites. The threats from roadside maintenance and habitat alterations by invasive plant encroachment are moderate in magnitude, as they are not affecting all locations of this species. However, the threats are currently occurring, and therefore imminent. To help ensure consistency in the application of our listing priority process, we changed the LPN from a 5 to an 8 for this species.

Physaria douglasii ssp. *tuplashensis* (White Bluffs bladderpod) – In previous Candidate Notices of Review, we referred to *P. douglasii* ssp. *tuplashensis* as *P. tuplashensis*. We have now dropped that name because the paper that recommended its use was never published. As a result, we are following

the treatment of a 2002 published scientific paper that recognized the White Bluffs bladderpod as *Physaria douglassii* ssp. *tuplashensis.*

White Bluffs bladderpod is a low-growing, herbaceous, short-lived perennial plant in the Brassicaceae (mustard) family. Historically and currently, White Bluffs bladderpod (*P. douglasii* ssp. *tuplashensis*) has been known from only a single population that occurs along the White Bluffs of the Columbia River in Franklin County, Washington. The entire range of the species is a narrow band, approximately 33 feet (10 meters) wide by 10.6 miles (17 km) long, at the upper edge of the bluffs. The species occurs only on cemented, highly alkaline, calcium carbonate paleosol (a ''caliche'' soil) and is believed to be a ''calciphile.''

Approximately 35 percent of the known range of the species has been moderately to severely affected by landslides, an apparently permanent destruction of the habitat. The entire population of the species is down slope of irrigated agricultural land, the source of the water seepage causing the mass failures and landslides. However, the southern portion is the closest to the agricultural land and the most affected by landslides. Other significant threats include use of the habitat by recreational off-road vehicles which destroy plants, and the presence of invasive nonnative plants that compete with *P. douglassii* ssp. *tuplashensis* for resources (light, water, nutrients). Additionally, the increasing presence of invasive nonnative plants may alter fire regimes and potentially increase the threat of fire to the *P. douglasii* ssp. *tuplashensis* population. As a result of a fire in 2007, there is a higher probability that invasion of these nonnatives will occur. We reanalyzed the magnitude and imminence of the threats, which resulted in a change in the LPN for *P. douglasii* ssp. *tuplashensis*. The threats to the population from landslides and the recreational off-road vehicle use are currently occurring and will continue to occur in the future. In addition, invasion by nonnative plants is currently occurring, and with the 2007 fire that occurred in the area of the existing population, invasive plants will likely spread and increase throughout the burned area of the population. We have therefore determined that these threats are imminent. Although approximately 35 percent of the population is severely affected by landslides in the southern portion of the range, the likelihood of the persistence of the population in the unaffected northern portion appears to be relatively high. Currently, we know of no plans to expand or significantly modify the existing agriculture activities in areas adjacent to the population. In addition, deliberate modification of the species' immediate habitat is unlikely due to its location and 85 percent having Federal ownership. Even though off-road vehicle use is prohibited on the monument, intermittent, ongoing use does occur. However, these activities, although they are ongoing, are mainly confined to the upper portion of the White Bluffs where few *P. tuplashensis* plants occur, so there is low to moderate threat to the species from these activities. Invasive plants are present in the vicinity, but have not yet been described as a significant problem. While *P. douglasii* ssp. *tuplashensis* is inherently vulnerable because it is a narrow endemic, the magnitude of the threats to the population is moderate. The threats are currently occurring, and therefore imminent. To help ensure consistency in the application of our listing priority process and to recognize the correct taxonomic name, we changed the LPN from a 5 to a 9 for this subspecies.

Platanthera integrilabia (White fringeless orchid) – *Platanthera integrilabia* is a perennial herb that grows in partially but not fully shaded, wet, boggy areas at the heads of streams and on seepage slopes in Alabama, Georgia, Kentucky, and Tennessee. Historically, there were at least 90 populations of *P. integrilabia*. Currently there are approximately 50 extant sites supporting the species.

Several populations have been extirpated due to road, residential, and commercial construction and projects that altered soil and site hydrology such that suitability for the species was reduced. Several of the known populations are in or adjacent to powerline rights of way. Mechanical clearing of these areas may benefit the species by maintaining adequate light levels; however, the indiscriminant use of herbicides in these areas could pose a significant threat to the species. All-terrain vehicles have damaged several sites and pose a threat at most sites. Most of the known sites for the species occur in areas that are managed specifically for timber production. Timber management is not necessarily incompatible with the protection and management of the species, but care must be taken during timber management to ensure that the hydrology of the bogs that support the species is not altered. Natural succession can result in decreased light levels. Because of the species' dependence upon moderate to high light levels, some type of active management to prevent complete canopy closure is required at most locations. Collecting for commercial and other purposes is a potential threat. Herbivory (primarily by deer) threatens the species at several sites. Due to the alteration of habitat and changes in natural conditions, protection and recovery of this species is dependent upon active management rather than just preservation of habitat. Invasive, nonnative plants such as Japanese honeysuckle and kudzu threaten several sites. Upon review of current listing guidance and threats affecting the species, we have revised the LPN to reflect the fact that threats are currently operating at most sites and are therefore imminent. While the threats are widespread, however, the impact of those threats on the species survival is moderate in magnitude. Several of the sites are protected to some degree from the threats by being within State parks, national forests, wildlife management areas, or other protected land. As a result, we changed the LPN from a 5 to an 8 for this species.

Candidate Removals

As summarized below, we have evaluated the threats to the following four species and considered factors that, individually and in combination, currently or potentially could pose a risk to these species and their habitat. After a review of the best available scientific and commercial data, we conclude that listing these four species under the Endangered Species Act is not warranted because the species are not likely to become endangered species within the foreseeable future throughout all or a significant portion of their range. Therefore, for each of these species we find that proposing a rule to list it is not warranted, and we no longer consider it to be a candidate species for listing. We will continue to monitor the status of these species, and to accept additional information and comments concerning this finding. We will reconsider our determination for each species in the event that new information indicates that the threats to the species are of a considerably greater magnitude or imminence than identified through assessments of information contained in our files, as summarized here.

Snails

Fat-whorled pondsnail (*Stagnicola bonnevillenis*) – The fat-whorled pondsnail, also known as the Bonneville pondsnail, was thought to occur in only four spring pools north of the Great Salt Lake in Box Elder County, Utah. Additional surveys found Lymnaeid snails including *S. bonnevillensis*-like

shells in springs throughout the playa. New information shows that shell characteristics vary greatly with environmental conditions. Because the fat-whorled pondsnail was classified based only on the shell appearance, the taxonomy is questionable. Because of uncertainties surrounding the validity of *S. bonnevillensis* as a species, we evaluated all *Stagnicola* sp. inhabiting the spring pools previously thought to be occupied by *S. bonnevillensis*. The primary threat to these pools has been chemical contamination of the groundwater. Significant actions have been taken to remediate this threat, including implementing corrective actions to track and remediate groundwater contamination, implementation of a site management plan, and development of a groundwater model and risk assessment. The plan has been implemented, and conservation measures are currently being monitored for effectiveness. These efforts have been under way for a sufficient period to effectively eliminate the threat from contamination. We know of no other threats to the springs in the range of *S. bonnevillensis*. Based on findings and analysis in our updated assessment, we conclude that this species in not likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, and listing this species under the Endangered Species Act is therefore not warranted. The species no longer meets our definition of a candidate, and we have removed it from candidate status.

Crustaceans

Troglobitic groundwater shrimp (*Typhlatya monae*) – *Typhlatya monae* is a small subterranean small shrimp known from Puerto Rico, Barbuda, and the Dominican Republic. It is classified as a troglobite, or obligatory cave organism, of which its most extraordinary feature is the reduction or loss of vision and pigmentation. *T. monae* feeds on organic waste material and debris, such as bat guano. Little is known concerning the status of *T. monae* in either Barbuda or Dominican Republic and we are not aware of any threats to this species in those locations. This species was discovered on Mona Island, in Puerto Rico but was later found on the Puerto Rico mainland in three caves within the Guánica Commonwealth Forest in the municipalities of Guánica, Yauco, and Guayanilla. Although the species was not found on Mona Island during surveys conducted in 1974 and 1995, the species may still be found in the reef deposit aquifers in Mona Island that have not yet been surveyed.

In 1995, the total population was estimated to be close to 2,000 individuals; over 95 percent of these were observed in one cave. Although no systematic censuses have been conducted since 1995, the Service has recently documented the presence of the species in all three mainland caves and obtained information from Puerto Rico Commonwealth Forest personnel regarding two additional caves in which the species may occur.

In past reviews, we determined that the species was threatened by habitat disturbance, human-induced fires, hurricanes and floods. However, the Guánica Commonwealth Forest and Mona Island Natural Reserve are managed for conservation by the Puerto Rico Department of Natural and Environmental Resources (DNER). Caves in the Guánica Forest are closed to public visitors; therefore, habitat modification and disturbance, and human-induced fires are not anticipated. Caves on Mona Island are seldom visited, and adverse effects to these areas have not been documented. The species is located in pools inside caves, and underground waters; thus, we do not anticipate impacts from hurricanes. *Typhlatya monae* was first described in Mona Island from el Pozo Del Portuguez and from a deep well close to the airport. At the present time, the use of this well is limited to DNER staff; therefore, additional extraction of underground waters is not expected. Currently, the DNER utilizes water cisterns and commercial potable water as alternate water sources. The species is protected by Regulation #6766 (''Reglamento para Regir las Especies Vulnerables y en Peligro de Extinciön en el Estado Libre Asociado de Puerto Rico''), adopted in 2004 by the Commonwealth of Puerto Rico. Under Regulation #6766, *T. monae* is listed as Critically Endangered (CR). Regulation #6766 prohibits collecting, killing, or harming listed species. We conclude that this species in not likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, and listing this species under the Endangered Species Act is not warranted. The species no longer meets our definition of a candidate, and we have removed it from candidate status.

Flowering Plants

Calliandra locoensis (no common name) – *Calliandra locoensis* is a spiny, leguminous shrub currently known from five localities within the Susuá Commonwealth Forest in the municipalities of Yauco and Sabana Grande, in southwestern Puerto Rico. This species is endemic to Puerto Rico, and was discovered in 1991 during a study of the flora of the Susuá Commonwealth Forest; it was described by Garciá and Kolterman in 1992. *Calliandra locoensis* is found on shallow, serpentine soils with low nutrients, high drainage, and low fertility. In 2007, local botanists reported 3 populations with approximately 1,600 adult plants and numerous seedlings in 5 localities indicating that the number of adult individuals has doubled and the number of localities has increased since surveys conducted in 1998.

In previous reviews, we determined that the species was threatened by forest-management practices (accidental trampling, brush clearing, trail maintenance), forest fires (natural or manmade), catastrophic natural events (hurricanes, floods, mudslides), and restricted distribution. We now find that this species is not currently threatened by forest management practices. The species is currently considered as a critical element under the Puerto Rico Department of Natural and Environmental Resources Natural Heritage Program; consequently activities conducted in the forest are generally scrutinized and measures to minimize or avoid impacts to species are recommended and implemented. The Susuá Commonwealth Forest is also protected by Law #133 and has been designated as a Critical Wildlife Area. We also previously indicated that this species was vulnerable to hurricanes and human-induced fires. Plants endemic to the Caribbean are naturally adapted to the impact of hurricanes (the species usually lose their leaves for a certain period of time, but recover them later). Although hurricanes are common occurrences in Puerto Rico, damage to this species by hurricanes has not been reported in any of the currently known populations in the last decade. Surveys have indicated that despite hurricanes occurring in the areas where *C. locoensis* exists, the number of adult individuals has doubled, the number of localities has increased, evidence suggests that the species is successfully reproducing. Thus, we have determined that hurricanes are not a threat. The currently known populations are not located near the roads of the forest, which are more vulnerable to fires and DNER implements a fire prevention plan within the forest, particularly during the dry season; therefore, fire is not a threat to the species. We conclude that this species in not likely to become

an endangered species within the foreseeable future throughout all or a significant portion of its range, and listing this species under the Endangered Species Act is not warranted. The species no longer meets our definition of a candidate, and we have removed it from candidate status.

Calyptranthes estremerae (no common name) – *Calyptranthes estremerae* is a small tree from the subtropical moist forest of northwestern Puerto Rico, in the municipalities of Camuy, Utuado, and Arecibo. *Calyptranthes estremerae* was only known from several individuals found near the recreation area adjacent to the Rió Camuy Cave Park. At present time, about 100 individuals of *C. estremerae* are estimated for the Camuy Cave Park area, Rió Abajo Commonwealth Forest (managed by the Puerto Rico Department of Natural and Environmental Resources (DNER)), and a privately owned farm in Sabana Hoyos, Arecibo.

We have found that this species is no longer threatened by the expansion of recreation facilities within Cavernas de Camuy Park and Rió Abajo Commonwealth Forest, as there are no plans to expand such facilities. In addition, the Rió Abajo Commonwealth Forest has a management plan in place that emphasizes protection and conservation of species classified under DNER as critical, threatened, or endangered and their habitat; *C. estremerae* is classified as a critical element by DNER. Furthermore, actions that may affect such classified species are generally scrutinized, and measures to minimize or avoid impacts to these species are recommended and implemented. The Rió Abajo Commonwealth Forest is also protected by designation as a Critical Wildlife Area. In previous assessments, we indicated that the small number of individuals of *C. estremerae* in the two populations, along with the species' limited distribution made this species vulnerable to potential catastrophic natural (hurricanes) and manmade (fires) events. However, damage by hurricanes has not been reported in any of the currently known populations. In addition, because the species exists in the subtropical moist forest life zone, the threat of human-induced fires is low; further, the DNER implements an islandwide fire prevention plan in public forests. Therefore, fires are currently not a threat to this species. We conclude that this species in not likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, and listing this species under the Endangered Species Act is not warranted. The species no longer meets our definition of a candidate, and we have removed it from candidate status.

Petition Findings

The Act provides two mechanisms for considering species for listing. One method allows the Secretary, on his own initiative, to identify species for listing under the standards of section 4(a)(1). We implement this through the candidate program, discussed above. The second method for listing a species provides a mechanism for the public to petition us to add a species to the Lists. Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information that listing may be warranted (a ''90–day finding''). If we make a positive 90–day finding, we must promptly commence a status review of the species under section 4(b)(3)(A); we must then make and publish one of three possible findings within 12 months of the receipt of the petition (a ''12–month finding''):

1. The petitioned action is not warranted;

2. The petitioned action is warranted (in which case we are required to promptly publish a proposed regulation to implement the petitioned action; once we publish a proposed rule for a species, section 4(b)(5) and 4(b)(6) govern further procedures regardless of whether we issued the proposal in response to a petition); or

3. The petitioned action is warranted but (a) the immediate proposal of a regulation and final promulgation of regulation implementing the petitioned action is precluded by pending proposals, and (b) expeditious progress is being made to add qualified species to the lists of endangered or threatened species. (We refer to this as a ''warranted-but-precluded finding.'')

Section 4(b)(3)(C) of the Act requires that when we make a warranted-but-precluded finding on a petition, we are to treat such a petition as one that is resubmitted on the date of such a finding. Thus, we are required to publish new 12–month findings on these ''resubmitted'' petitions on an annual basis.

On December 5, 1996, we made a final decision to redefine ''candidate species'' to mean those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list, but for which issuance of the proposed rule is precluded (61 FR 64481; December 6, 1996). Therefore, the standard for making a species a candidate through our own initiative is identical to the standard for making a warranted-but-precluded 12–month petition finding on a petition to list, and we add all petitioned species for which we have made a warranted-but-precluded 12–month finding to the candidate list.

This publication provides notice of substantial 90–day findings and the warranted-but-precluded 12–month findings pursuant to section 4(b)(3) for candidate species listed on Table 1 that we identified on our own initiative, and that subsequently have been the subject of a petition to list. Even though all candidate species identified through our own initiative already have received the equivalent of substantial 90–day and warranted-but-precluded 12–month findings, we review the status of the newly petitioned candidate species and through this CNOR publish specific section 4(b)(3) findings (i.e., substantial 90–day and warranted-but-precluded 12–month findings) in response to the petitions to list these candidate species. We publish these findings as part of the first CNOR following receipt of the petition.

Pursuant to section 4(b)(3)(C)(i) of the Act, once a petition is filed regarding a candidate species, we must make a 12–month petition finding in compliance with section 4(b)(3)(B) of the Act at least once a year, until we publish a proposal to list the species or make a final not-warranted finding. We make these annual findings for petitioned candidate species through the CNOR.

Section 4(b)(3)(C)(iii) of the Act requires us to ''implement a system to monitor effectively the status of all species'' for which we have made a warranted-but-precluded 12–month finding, and to ''make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant risk to the well being of any such species.'' The CNOR plays a crucial role in the monitoring system that we have implemented for all candidate species by providing notice that we are actively seeking information regarding the status of those species. We review all new information on candidate species as it becomes available, prepare an annual species assessment form that reflects monitoring results and other new information, and identify any species for which emergency listing may be appropriate. If we determine that emergency listing is appropriate for any candidate, whether it was identified through our own initiative or through the petition process, we will make prompt use of the emergency listing authority under section 4(b)(7). We have

been reviewing and will continue to review, at least annually, the status of every candidate, whether or not we have received a petition to list it. Thus, the CNOR and accompanying species assessment forms constitute the Service's annual finding on the status of petitioned species pursuant to section 4(b)(3)(C)(i).

On June 20, 2001, the United States Court of Appeals for the Ninth Circuit held that the 1999 CNOR (64 FR 57534; October 25, 1999) did not demonstrate that we fulfilled the second component of the warranted-but-precluded 12–month petition findings for the Gila chub and Chiracahua leopard frog (*Center for Biological Diversity* v. *Norton*, 254 F.3d 833 (9th Cir. 2001)). The court found that the one-line designation in the table of candidates in the 1999 CNOR, with no further explanation, did not satisfy section 4(b)(3)(B)(iii)'s requirement that the Service publish a finding ''together with a description and evaluation of the reasons and data on which the finding is based.'' The court suggested that this one-line statement of candidate status also precluded meaningful judicial review.

On June 21, 2004, the United States District Court for Oregon agreed that we can use the CNOR as a vehicle for making petition findings and that our reasoning for why listing is precluded does not need to be based on an assessment at a regional level (as opposed to a national level) (*Center for Biological Diversity* v. *Norton* Civ. No. 03-1111-AA (D. Or.)). However, this court found that our discussion on why listing the candidate species were precluded by other actions lacked specificity; in the list of species that were the subject of listing actions that precluded us from proposing to list candidate species, we did not state the specific action at issue for each species in the list and we did not indicate which actions were court-ordered.

On June 22, 2004, in a similar case, the United States District Court for the Eastern District of California also concluded that our determination of preclusion may appropriately be based on a national analysis (*Center for Biological Diversity* v. *Norton* No. CV S-03-1758 GEB/DAD (E.D. Cal.)). This court also found that the Act's imperative that listing decisions be based solely on science applies only to the determination about whether listing is warranted, not the question of when listing is precluded.

On March 24, 2005, the United States District Court for the District of Columbia held that we may not consider critical habitat activities in justifying our inability to list candidate species, requiring that we justify both our preclusion findings and our demonstration of expeditious progress by reference to listing proceedings for unlisted species (*California Native Plant Society* v. *Norton*, Civ. No. 03-1540 (JR) (D.D.C.)). The court further found that we must adequately itemize priority listings, explain why certain species are of high priority, and explain why actions on these high-priority species preclude listing species of lower priority. The court approved our reliance on national rather than regional priorities and workload in establishing preclusion and approved our basic explanation that listing candidate species may be precluded by statutorily mandated deadlines, court-ordered actions, higher priority listing activities, and a limited budget.

In this CNOR we continue to incorporate information that addresses the courts' concerns. We include a description of the reasons why the listing of every petitioned candidate species is both warranted and precluded at this time. We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis (see below). Regional priorities can also be discerned from Table 1, which includes the lead region and the LPN for each species. Our preclusion determinations are further based upon our budget for listing activities for unlisted species, and we explain the priority system and why the work we have accomplished does preclude action on listing candidate species.

Pursuant to section 4(b)(3)(C)(ii) and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), any party with standing may challenge the merits of any not-warranted or warranted-but-precluded petition finding incorporated in this CNOR. The analysis included herein, together with the administrative record for the decision at issue (particularly the supporting species assessment form), will provide an adequate basis for a court to review the petition finding.

Nothing in this document or any of our policies should be construed as in any way modifying the Act's requirement that we make a resubmitted 12–month petition finding for each petitioned candidate within 1 year of the date of publication of this CNOR. If we fail to make any such finding on a timely basis, whether through publication of a new CNOR or some other form of notice, any party with standing may seek judicial review.

In this CNOR, we continue to address the concerns of the courts by including specific information in our discussion on preclusion (see below). In preparing this CNOR, we reviewed the current status of, and threats to, the 162 candidates and 6 listed species for which we have received a petition and for which we have found listing or reclassification from threatened to endangered to be warranted but precluded. We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these species has been, for the preceding months, and continues to be, precluded by higher priority listing actions. Additional information that is the basis for this finding is found in the species assessments and our administrative record for each species.

Our review included updating the status of, and threats to, petitioned candidate or listed species for which we published findings, pursuant to section 4(b)(3)(B), in the previous CNOR. We have incorporated new information we gathered since the prior finding and, as a result of this review, we are making continued warranted-but-precluded 12–month findings on the petitions for these species.

We have identified the candidate species for which we received petitions by the code ''C*'' in the category column on the left side of Table 1. The immediate publication of proposed rules to list these species was precluded by our work on higher priority listing actions, listed below, during the period from October 1, 2008, through September 30, 2009. We will continue to monitor the status of all candidate species, including petitioned species, as new information becomes available to determine if a change in status is warranted, including the need to emergency-list a species under section 4(b)(7) of the Act.

In addition to identifying petitioned candidate species in Table 1 below, we also present brief summaries of why these particular candidates warrant listing. More complete information, including references, is found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from the Fish and Wildlife Service's Internet website: *http://endangered.fws.gov/*. As described above, under section 4 of the Act we may identify and propose species for listing based on the factors identified in section 4(a)(1), and section 4 also provides a mechanism for the public to petition us to add a species to the lists

of species determined to be threatened species or endangered species under the Act. Below we describe the actions that continue to preclude the immediate proposal and final promulgation of a regulation implementing each of the petitioned actions for which we have made a warranted-but-precluded finding, and we describe the expeditious progress we are making to add qualified species to the lists of endangered or threatened species.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: proposed and final listing rules; 90–day and 12–month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive, and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12–month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range that requires a relatively uncomplicated analysis to $305,000 for another species that is wide-ranging and requires a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. § 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105-163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002, and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: ''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107 - 103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species; however, in subsequent FYs we were unable to do this because all of the critical habitat subcap funds were needed to address our workload for designating critical habitat.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, represent the resources we must take into consideration when we make our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding, when making a 12–month petition finding, whether we would prepare and issue a listing proposal or instead make a warranted-but-precluded finding for a given species. The Conference Report accompanying Pub. L. 97-304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90–day petition findings that by its own terms also covers 12–month findings) that the deadlines were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise.''

In FY 2009, expeditious progress is that amount of work that can be achieved with $8,808,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $8,808,000 was used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. The allocations for each specific listing action are identified in the Service's FY 2009 Allocation Table (part of our administrative record).

In FY 2007, we had more than 120 species with an LPN of 2, based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the

sole member of a genus); species; or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Because of the large number of high-priority species, we further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprised a group of approximately 40 candidate species (''Top 40''). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for these 40 candidates, we are applying the ranking criteria to the next group of candidates with LPN of 2 and 3 to determine the next set of highest priority candidate species.

To be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources are also a factor in determining which high-priority species will receive funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations.

Thus, we continue to find that proposals to list the petitioned candidate species included in Table 1 are all warranted but precluded.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program, which is funded by a separate line item in the budget of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our ''precluded'' finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we made expeditious progress in FY 2009 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2009 COMPLETED LISTING ACTIONS

Publication Date	Title	Actions	FR Pages
10/15/2008	90-Day Finding on a Petition To List the Least Chub	Notice of 90–day Petition Finding, Substantial	73 FR 61007 61015
10/21/2008	Listing 48 Species on Kauai as Endangered and Designating Critical Habitat	Proposed Listing, Endangered; Proposed Critical Habitat	73 FR 62591 62742
10/24/2008	90-Day Finding on a Petition to List the Sacramento Valley Tiger Beetle as Endangered	Notice of 90–day Petition Finding, Not substantial	73 FR 63421 63424
10/28/2008	90-Day Finding on a Petition To List the Dusky Tree Vole *(Arborimus longicaudus silvicola*) as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	73 FR 63919 63926
11/25/2008	12-Month Finding on a Petition To List the Northern Mexican Gartersnake *(Thamnophis eques megalops*) as Threatened or Endangered With Critical Habitat; Proposed Rule	Notice of 12 month petition finding, Warranted but precluded	73 FR 71787 71826
12/02/2008	90-Day Finding on a Petition To List the Black-tailed Prairie Dog as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	73 FR 73211 73219
12/05/2008	90-Day Finding on a Petition To List the Sacramento Mountains Checkerspot Butterfly *(Euphydryas anicia cloudcrofti*) as Endangered with Critical Habitat	Notice of 90–day Petition Finding, Substantial	73 FR 74123 74129
12/18/2008	90-Day Finding on a Petition to Change the Listing Status of the Canada Lynx	Notice of 90–day Petition Finding, Substantial	73 FR 76990 76994
1/06/2009	Partial 90-Day Finding on a Petition To List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Not substantial	74 FR 419 427
2/05/2009	Partial 90-Day Finding on a Petition To List 206 Species in the in the Midwest and Western United States as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Not substantial	74 FR 6122 6128

FY 2009 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
2/10/2009	90-Day Finding on a Petition To List the Wyoming Pocket Gopher as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 6558 6563
3/17/2009	Listing *Phyllostegiahispida* (No Common Name) as Endangered Throughout Its Range	Final Listing Endangered	74 FR 11319 11327
3/25/2009	12-Month Finding on a Petition to List the Yellow-Billed Loon as Threatened or Endangered	Notice of 12 month petition finding, Warranted but precluded	74 FR 12931 12968
4/09/2009	12-Month Finding on a Petition to List the San Francisco Bay-Delta Population of the Longfin Smelt *(Spirinchus thaleichthys*) as Endangered	Notice of 12 month petition finding, Not warranted	74 FR 16169 16175
4/22/2009	90-Day Finding on a Petition To List the Tehachapi Slender Salamander *(Batrachoseps stebbinsi*) as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 18336 18341
5/07/2009	90-Day Finding on a Petition To List the American Pika as Threatened or Endangered with Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 21301 21310
5/19/2009	12-Month Finding on a Petition to List the Coaster Brook Trout as Endangered	Notice 12–month petition finding, Not warranted	74 FR 23376 23388
6/09/2009	90-Day Finding on a Petition To List *Oenothera acutissima* (Narrowleaf Evening-primrose) as Threatened or Endangered	Notice of 90–day Petition Finding, Not substantial	74 FR 27266 27271
6/29/2009	Proposed Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail with Critical Habitat	Proposed Listing, Endangered; Proposed Critical Habitat	74 FR 31113 31151
7/01/2009	90-Day Finding on a Petition to List the Northern Leopard Frog *(Lithobates* [=Rana] *pipiens*) in the Western United States as Threatened	Notice of 90–day Petition Finding, Substantial	74 FR 31389 31401
7/07/2009	12-Month Finding on a Petition To List a Distinct Population Segment of the Roundtail Chub *(Gila robusta*) in the Lower Colorado River Basin	Notice of 12–month petition finding, Warranted but precluded	74 FR 32351 32387
7/08/2009	90-Day Finding on a Petition to List the Coqui Llanero *(Eleutherodactylus juanariveroi*) as Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 32510 32513
7/08/2009	90-Day Finding on a Petition to List the Susan's purse-making caddisfly *(Ochrotrichia susanae*) as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 32514 32521
7/08/2009	Proposed Endangered Status for Flying Earwig Hawaiian Damselfly *(Megalagrion nesiotes*) and Pacific Hawaiian Damselfly *(M. pacificum*) Throughout Their Ranges	Proposed Listing, Endangered	74 FR 32490 32510
7/09/2009	Listing Casey's June Beetle *(Dinacoma caseyi*) as Endangered and Designation of Critical Habitat	Proposed Listing, Endangered; Proposed Critical Habitat	74 FR 32857 32875
7/22/2009	90-Day Finding on a Petition To List the White-Sided Jackrabbit *(Lepus callotis*) as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 36152 36158
8/06/2009	Initiation of Status Review for Mountain Whitefish *(Prosopium williamsoni*) in the Big Lost River, Idaho	Notice of Status Review	74 FR 39268 39269
8/11/2009	90-Day Finding on a Petition To List the Jemez Mountains Salamander *(Plethodon neomexicanus*) as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 40132 40138
8/18/2009	Partial 90-Day Finding on a Petition To List 206 Species in the Midwest and Western United States as Threatened or Endangered with Critical Habitat	Notice of 90–day Petition Finding, Not substantial (9 species); Notice 90–day Petition Finding, Substantial (29 species)	74 FR 41649 41662

FY 2009 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
8/19/2009	12-Month Finding on a Petition To List the Ashy Storm-Petrel as Threatened or Endangered	Notice of 12 month petition finding, Not warranted	74 FR 41832 41860
8/28/2009	90-Day Finding on a Petition To List the Sonoran Population of Desert Tortoise *(Gopherus agasizzii)* as a Distinct Population Segment (DPS) With Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 44335 44344
9/02/2009	12-Month Finding on a Petition To List the Sacramento Mountains Checkerspot Butterfly as Endangered with Critical Habitat	Notice of 12 month petition finding, Not warranted	74 FR 45396 45411
9/09/2009	90-Day Finding on a Petition to List the Eastern Population of the Gopher Tortoise *(Gopherus polyphemus)* as Threatened	Notice of 90–day Petition Finding, Substantial	74 FR 46401 46406
9/10/2009	12-Month Finding on a Petition to List *Astragalus anserinus* (Goose Creek milkvetch) as Threatened or Endangered	Notice of 12 month petition finding, Warranted but precluded	74 FR 46521 46542
9/10/2009	90-Day Finding on a Petition to List *Cirsium wrightii* (Wright's marsh thistle) as Threatened or Endangered with Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 46542 46547
9/10/2009	90-Day Finding on a Petition to List the Pacific Walrus as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 46551 46557
9/10/2009	Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Amargosa Toad *(Bufo nelsoni)* as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 46548 46551

Our expeditious progress also included work on listing actions that we funded in FY 2009 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding as compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2009 BUT NOT COMPLETED IN FY 2009

SPECIES	ACTION
ACTIONS SUBJECT TO COURT ORDER/SETTLEMENT AGREEMENT	
Slickspot peppergrass	Final listing determination
Coastal cutthroat trout	Final listing determination
Mono basin sage-grouse	12–month petition finding
Greater sage-grouse	12–month petition finding
SW bald eagle population	12–month petition finding
Black-tailed prairie dog	12–month petition finding
Lynx (include New Mexico in listing)	12–month petition finding
White-tailed prairie dog	12–month petition finding
American pika	12–month petition finding
Hermes copper butterfly	90–day petition finding
Thorne's hairstreak butterfly	90–day petition finding
ACTIONS WITH STATUTORY DEADLINES	

ACTIONS FUNDED IN FY 2009 BUT NOT COMPLETED IN FY 2009—Continued

SPECIES	ACTION
48 Kauai species	Final listing determination
Black-footed albatross	12–month petition finding
Mount Charleston blue butterfly	12–month petition finding
Mojave fringe-toed lizard[1]	12–month petition finding
Pygmy rabbit (rangewide)[1]	12–month petition finding
Kokanee – Lake Sammamish population[1]	12–month petition finding
Delta smelt (uplisting)	12–month petition finding
Cactus ferruginous pygmy-owl[1]	12–month petition finding
Tucson shovel-nosed snake[1]	12–month petition finding
Northern leopard frog	12–month petition finding
Tehachapi slender salamander	12–month petition finding
Coqui Llanero	12–month petition finding
Susan's purse-making caddisfly	12–month petition finding
White-sided jackrabbit	12–month petition finding
Jemez Mountains salamander	12–month petition finding
29 of 206 species	12–month petition finding
Desert tortoise – Sonoran population	12–month petition finding
Gopher tortoise – eastern population	12–month petition finding
Wrights marsh thistle	12–month petition finding
Southeastern pop snowy plover & wintering pop. of piping plover	90–day petition finding
Berry Cave salamander[1]	90–day petition finding
Ozark chinquapin[1]	90–day petition finding
Smooth-billed ani	90–day petition finding
Bay Springs salamander[1]	90–day petition finding
Mojave ground squirrel[1]	90–day petition finding
32 species of snails and slugs	90–day petition finding
Calopogon oklahomensis	90–day petition finding
Striped newt	90–day petition finding
American dipper – Black Hills population	90–day petition finding
Sprague's pipit	90–day petition finding
Southern hickorynut	90–day petition finding
5 Southwest mussel species	90–day petition finding
Chihuahua scarfpea	90–day petition finding
White-bark pine	90–day petition finding
Puerto Rico harlequin	90–day petition finding
Fisher – Northern Rocky Mtns. population	90–day petition finding
42 snail species (Nevada & Utah)	90–day petition finding

ACTIONS FUNDED IN FY 2009 BUT NOT COMPLETED IN FY 2009—Continued

SPECIES	ACTION
HI yellow-faced bees	90–day petition finding
475 Southwestern species (partially completed)	90–day petition finding
HIGH PRIORITY LISTING ACTIONS [3]	
19 Oahu candidate species (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN = 9)	Proposed listing
17 Maui-Nui candidate species (14 plants, 3 tree snails) (12 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing
Sand dune lizard (LPN = 2)	Proposed listing
2 Arizona springsnails *(Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing
2 New Mexico springsnails *(Pyrgulopsis chupaderae* (LPN = 2), *Pyrgulopsis thermalis* (LPN = 11))	Proposed listing
2 mussels (rayed bean (LPN = 2), snuffbox No LPN)	Proposed listing
2 mussels (sheepnose (LPN = 2), spectaclecase (LPN = 4),)	Proposed listing
Ozark hellbender[2] (LPN = 3)	Proposed listing
Altamaha spinymussel (LPN = 2)	Proposed listing
5 southeast fish (rush darter (LPN = 2), chucky madtom (LPN = 2), yellowcheek darter (LPN = 2), Cumberland darter (LPN = 5), laurel dace (LPN = 5))	Proposed listing
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11))	Proposed listing
3 Colorado plants (Pagosa skyrocket *(Ipomopsis polyantha*) (LPN = 2), Parachute beardtongue *(Penstemon debilis*) (LPN = 2), Debeque phacelia *(Phacelia submutica*) (LPN = 8))	Proposed listing

[1] Funds for listing actions for these species were provided in previous FYs.
[2] We funded a proposed rule for this subspecies with an LPN of 3 ahead of other species with LPN of 2, because the threats to the species were so imminent and of a high magnitude that we considered emergency listing if we were unable to fund work on a proposed listing rule in FY 2008.
[3] Funds for these high-priority listing actions were provided in FY 2008 and 2009
[3] Funds for these high-priority listing actions were provided in FY 2008 and 2009

We also funded work on resubmitted petitions findings for 162 candidate species (species petitioned prior to the last CNOR). We did not include new information in our resubmitted petition finding for the Columbia Basin population of the greater sage-grouse in this notice, as we are considering new information and will update our finding at a later date (see 73 FR 23170, April 29, 2008). We also did not include new information in our resubmitted petition findings for the 48 candidate species for which we are preparing proposed listing determinations; see summaries below regarding publication of these determinations. We also funded revised 12–month petition findings for four candidate species that we are removing from candidate status, which are being published as part of this CNOR (see *Candidate Removals*). Because the majority of these species were already candidate species prior to our receipt of a petition to list them, we had already assessed their status using funds from our Candidate Conservation Program. We also continue to monitor the status of these species through our Candidate Conservation Program. The cost of updating the species assessment forms and publishing the joint publication of the CNOR and resubmitted petition findings is shared between the Listing Program and the Candidate Conservation Program.

During FY 2009, we also funded work on resubmitted petition findings for uplisting six listed species, for which petitions were previously received.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, the actions described above collectively constitute expeditious progress.

Although we have not been able to resolve the listing status of many of the candidates, several programs in the Service contribute to the conservation of these species. In particular, the Candidate Conservation program, which is separately budgeted, focuses on providing technical expertise for developing conservation strategies and agreements to guide voluntary on-the-ground conservation work for candidate and other at-risk species. The main goal of this program is to address the threats facing candidate species. Through this program, we work with our partners (other Federal agencies, State agencies, Tribes, local governments, private landowners, and private conservation organizations) to address the threats to candidate species and other species at-risk. We are currently working with our partners to implement voluntary conservation agreements for more than 140 species covering 5 million acres of habitat. In some instances, the sustained implementation of strategically designed conservation efforts culminates in making listing unnecessary for species that are proposed or candidates for listing.

Findings for Petitioned Candidate Species

Below are updated summaries for petitioned candidate for which we published findings, pursuant to section 4(b)(3)(B). We are making continued warranted-but-precluded 12–month findings on the petitions for these species (for our revised 12–month petition findings for species we are removing from candidate status, see summaries above under ''**Candidate Removals**'').

Mammals

Pacific Sheath-tailed Bat, American Samoa DPS (*Emballonura semicaudata semicaudata*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This small bat is a member of the Emballonuridae, an Old World bat family that has an extensive distribution, primarily in the tropics. The Pacific sheath-tailed bat was once common and widespread in Polynesia and Micronesia and it is the only insectivorous bat recorded from a large part of this area. The species as a whole (*E. semicaudata*) occurred on several of the Caroline Islands (Palau, Chuuk, and Pohnpei), Samoa (Independent and American), the Mariana Islands (Guam and the CNMI), Tonga, Fiji, and Vanuatu. While populations appear to be healthy in some locations, mainly in the Caroline Islands, they have declined substantially in other areas, including Independent and American Samoa, the Mariana Islands, Fiji, and possibly Tonga. Scientists recognize four subspecies: *E. s. rotensis*, endemic to the Mariana Islands (Guam and the Commonwealth of the Northern Mariana Islands (CNMI)); *E. s. sulcata*, occurring in Chuuk and Pohnpei; *E. s. palauensis*, found in Palau; and *E. s. semicaudata*, occurring in American and Independent Samoa, Tonga, Fiji, and Vanuatu. This candidate assessment form addresses the distinct population segment (DPS) of *E. s. semicaudata* that occurs in American Samoa.

E. s. semicaudata historically occurred in American and Independent Samoa, Tonga, Fiji, and Vanuatu. It is extant in Fiji and Tonga, but may be extirpated from Vanuatu and Independent Samoa. There is some concern that it is also extirpated from American Samoa, the location of this DPS, where surveys are currently ongoing to ascertain its status. The factors that led to the decline of this subspecies and the DPS are poorly understood; however, current threats to this subspecies and the DPS include habitat loss, predation by introduced species, and its small population size and distribution, which make the taxon extremely vulnerable to extinction due to typhoons and similar natural catastrophes. Thus, the threats are high in magnitude. The Pacific sheath-tailed bat may also by susceptible to disturbance to roosting caves. The LPN for *E. s. semicaudata* is 3 because the magnitude of the threats is high, the threats are ongoing, and therefore, imminent, and the taxon is a distinct population segment of a subspecies.

Pacific Sheath-tailed Bat (*Emballonura semicaudata rotensis*), Guam and the Commonwealth of the Northern Mariana Islands – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This small bat is a member of the Emballonuridae, an Old World bat family that has an extensive distribution, primarily in the tropics. The Pacific sheath-tailed bat was once common and widespread in Polynesia and Micronesia and it is the only insectivorous bat recorded from a large part of this area. *E. s. rotensis* is historically known from the Mariana Islands and formerly occurred on Guam and in the CNMI on Rota, Aguiguan, Tinian (known from prehistoric records only), Saipan, and possibly Anatahan and Maug. Currently, *E. s. rotensis* appears to be extirpated from all but one island in the Mariana archipelago. The single remaining population of this subspecies occurs on Aguiguan, CNMI.

Threats to this subspecies have not changed over the past year. The primary threats to the subspecies are ongoing habitat loss and degradation as a result of feral goat (*Capra hircus*) activity on the island of Aguiguan and the taxon's small population size and limited distribution. Predation by nonnative species and human disturbance are also potential threats to the subspecies. The subspecies is believed near the point where stochastic events, such as typhoons, are increasingly likely to affect its continued survival. The disappearance of the remaining population on Aguiguan would result in the extinction of the subspecies. Thus, the threats are high in magnitude. The LPN for *E. s. rotensis* remains at 3 because the magnitude of the threats is high, the threats are ongoing, and therefore, imminent, and the taxon is a subspecies.

New England cottontail (*Sylvilagus transitionalis*) – The following summary is based on information contained in our files and information received in response to our notice published on June 30, 2004, when we announced our 90–day petition finding and initiation of a status review (69 FR 39395). We received the petition on August 30, 2000. The New England cottontail (NEC) is a medium-to large-sized cottontail rabbit that may reach 1,000 grams in weight, and is one of two species within the genus *Sylvilagus* occurring in New England. New England cottontails are considered habitat specialists, in so far as they are dependent upon early-successional habitats typically described as thickets. The species is the only endemic cottontail in New England. Historically, the NEC occurred in seven states and ranged from southeastern New York (east of the Hudson River) north through the Champlain Valley, southern Vermont, the southern half of New Hampshire, southern Maine and south throughout Massachusetts, Connecticut and Rhode Island. The current range of the NEC has declined substantially and occurrences have become increasingly separated. The species' distribution is fragmented into five apparently isolated metapopulations. The area occupied by the cottontail has contracted from approximately 90,000 sq km to 12,180 sq km. Recent surveys indicate that the long term decline in NEC continues. For example, surveys for the species in early 2008 documented the presence of NEC in 7 of the 23 New Hampshire locations that were known to be occupied in 2002 and 2003. Similarly, surveys in Maine found the species present in 12 of 57 sites identified in an extensive survey that spanned the years 2000 to 2004. Unlike the New Hampshire study, several new sites were documented in Maine during 2008. Some have suggested that the decline in NEC occurrences in 2008 may be attributed to persistent snow cover throughout northern New England during the winter of 2007-2008. Similar surveys were conducted during the winter of 2009 in Maine, New Hampshire, Rhode Island and New York. The results are pending further analysis. We estimate that less than one third of the occupied sites occur on conservation lands and fewer than 10 percent are being managed for early-successional forest species.

The primary threat to the New England cottontail is loss of habitat through succession and alteration. Isolation of occupied patches by areas of unsuitable habitat and high predation rates are resulting in local extirpation of New England cottontails from small patches. The range of the New England cottontail has contracted by 75 percent or more since 1960 and current land

uses in the region indicate that the rate of change, about two percent range loss per year, will continue. Additional threats include competition for food and habitat with introduced eastern cottontails and large numbers of native white-tailed deer; inadequate regulatory mechanisms to protect habitat; and mortality from predation. The magnitude of the threats continues to be high, because they occur rangewide, and result in mortality or significantly reduce the reproductive capacity of the species. They are imminent because they are ongoing. Thus, we retained an LPN of 2 for this species. Conservation measures that address the threats to the species are being developed.

Fisher, West Coast DPS (*Martes pennanti*) – The following summary is based on information contained in our files and in the Service's initial warranted-but-precluded finding published in the **Federal Register** on April 8, 2004 (68 FR 18770). The fisher is a carnivore in the family Mustelidae and is the largest member of the genus Martes. Historically, the West Coast population of the fisher extended south from British Columbia into western Washington and Oregon, and in the North Coast Ranges, Klamath-Siskiyou Mountains, and Sierra Nevada in California. Because of a lack of detections with standardized survey efforts over much of the fisher's historical range, the fisher is believed to be extirpated or reduced to scattered individuals from the lower mainland of British Columbia through Washington and northern Oregon and in the central and northern Sierra Nevada range in California. Native populations of fisher currently occur in the North Coast Ranges of California, the Klamath-Siskiyou Mountains of northern California and southern Oregon, and in isolated populations occurring in the southern Sierra Nevada in California. Descendents of a fisher reintroduction effort also occur in the southern Cascade Range in Oregon. In January of 2008, the Washington Department of Fish and Wildlife began to implement their fisher recovery goals for the state through a reintroduction effort in the Olympic National Park. Estimates of fisher numbers in native populations of the West Coast DPS vary widely. A rigorous monitoring program is lacking for the northern California/southern Oregon population making estimates of fisher numbers for this relatively large population difficult. The monitoring program of the southern Sierra Nevada population has provided preliminary estimates. No estimates are available for the introduced population in the southern Cascade Range in Oregon. There is also a high degree of genetic relatedness within some populations, and populations of native fisher in California are separated by four times the species' maximum dispersal distance. The above-listed factors all indicate that the likely extant fisher populations are small and isolated from one another.

Major threats that fragment or remove key elements of fisher habitat include various forest-vegetation-management practices such as timber harvest and fuels reduction treatments. Other potential major threats in portions of the range include: uncharacteristically severe wildfire, changes in forest composition and structure related to the effects of climate change, urban and rural development, recreation development, and highways. Major threats to fisher that lead to direct mortality and injury to fisher include: Collisions with vehicles; predation; and viral borne diseases such as rabies, parvovirus, canine distemper, and *Anaplasma phagocytophilum.* Existing regulatory mechanisms on Federal, State, and private lands affect key elements of fisher habitat but do not provide sufficient certainty that conservation efforts will be effective or will be implemented. The magnitude of threats is high as they occur across the range of the DPS resulting in a negative impact on fisher distribution and abundance, and since they significantly affect this species' reproductive capacity. However, the threats are nonimminent as the greatest long-term risks to the fisher in its west coast range are the subsequent ramifications of the isolation of small populations and their interactions with the listed threats which will affect the species over the long-term. The three remaining areas containing fisher populations appear to be stable or not rapidly declining based on recent survey and monitoring efforts. Therefore, we assigned an LPN of 6 to this population.

New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) – The following summary is based on information contained in our files and the petition we received October 15, 2008. The New Mexico meadow jumping mouse (jumping mouse) is endemic to New Mexico, Arizona, and a small area of southern Colorado. The jumping mouse nests in dry soils but uses moist, streamside, dense riparian/wetland vegetation. Recent genetic studies confirm that the jumping mouse is a distinct subspecies from other *Z. hudsonius* subspecies, confirming the currently accepted subspecies designation.

The threats that have been identified are excessive grazing pressure, water use and management, highway reconstruction, development, recreation, and beaver removal. Surveys conducted in 2005 and 2006 documented a drastic decline in the number of occupied localities and suitable habitat across the range of the species in New Mexico and Arizona. Of the original 103 known historical localities, 95 have been surveyed since the early to mid-1990s. Of the historical localities surveyed, currently only 16 are extant, 9 in New Mexico (including 1 that is contiguous with the Colorado locality) and 7 in Arizona. Moreover, the highly fragmented nature of its distribution is also a major contributor to the vulnerability of this species and increases the likelihood of very small, isolated populations being extirpated. The insufficient number of secure populations, and the destruction, modification, or curtailment of its habitat, continue to pose the most immediate threats to this species. Because the threats affect the jumping mouse in all but two of the extant localities, and the populations in these localities are small, the threats are of a high magnitude. These threats are currently occurring and, therefore, are imminent. Thus, we continue to assign an LPN of 3 to this subspecies.

Mazama pocket gopher (*Thomomys mazama* ssp. *couchi, douglasii, glacialis, louiei, melanops, pugetensis, tacomensis, tumuli, yelmensis*) – The following summary is based on information contained in our files. No new information was provided in the petition received December 11, 2002. Seven of the nine subspecies of pocket gopher are associated with glacial outwash prairies in western Washington, an ecosystem of conservation concern (*T. m. melanops* is found on alpine meadows in Olympic National Park, and *T. m. douglasii* is found in prairies in extreme southwest Washington). Of these seven subspecies, five are likely still extant (*couchi, glacialis, pugetensis, tumuli*, and *yelmensis*). Few of these glacial outwash prairies remain in Washington today. Historically, such prairies were patchily distributed, but the area they occupied totaled approximately 170,000 acres. Now, residential and commercial development and ingrowth of woody and/or nonnative vegetation have reduced their numbers. In addition, development in or adjacent to these prairies has likely increased predation on Mazama pocket gophers by dogs and cats.

The magnitude of threat is high due to populations with patchy and isolated

distributions in habitats highly desirable for development and subject to a wide variety of human activities that permanently alter the habitat. The threat of invasive plant species to the quality of a highly specific habitat requirement is high and constant. There are few known populations of each subspecies. A limited dispersal capability, and the loss and degradation of additional patches of appropriate habitat will further isolate populations and increase their vulnerability to extinction. Loss of any of the subspecies will reduce the genetic diversity and the likelihood of continued existence of the *Thomomys mazama* subspecies complex in Washington.

The threats are imminent. Two of the subspecies (Cathlamet and Tacoma) are likely extinct. The status of *T. m. douglasii* is unknown, but its habitat is threatened by encroaching development. Two gravel pits are operating on part of the remaining Roy Prairie pocket gopher habitat. The largest populations of two other subspecies (Shelton and Olympia) are located on airports with planned development. Yelm pocket gophers are also threatened by proposed development. Due to its low genetic diversity, isolation, and potential for natural habitat alterations in the future, *T. m. melanops* (Olympic pocket gopher) is susceptible to stochastic events and small population effects such as genetic drift and founder effects. Thus, we assign an LPN of 3 to these subspecies.

Gunnison's prairie dog (*Cynomys gunnisoni*) – This species occurs in Arizona, Colorado, New Mexico, and Utah. However, it is threatened or endangered only in the significant portion of the range in the montane portions of central and south central Colorado and north central New Mexico, and we anticipate that if and when it is listed, only that significant portion of its range will be specified as threatened or endangered. Within this portion of the range, plague has significantly reduced the number and size of populations. Populations within montane habitat have distinct disadvantages in resisting the effects of plague due to a higher abundance of fleas that spread plague, smaller populations that cannot recover in numbers from plague epizootics, and isolated populations that limit the ability to recolonize. Poisoning and shooting continue to be threats to the Gunnison's prairie dog within the montane portion of its range and contribute to the decline of the species when combined with the effects of disease. Agriculture, urbanization, roads, and oil and gas development each currently affect a small percentage of Gunnison's prairie dog habitat. Plague is significantly affecting the remaining small, isolated populations, and plague epizootics can extirpate populations there within a short timeframe (3 to 10 years). We have assigned an LPN of 3 to this species due to imminent threats of a high magnitude in a significant portion of its range.

Palm Springs round-tailed ground squirrel (*Spermophilus tereticaudus chlorus*) –The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Palm Springs round-tailed ground squirrel is one of four recognized subspecies of round-tailed ground squirrels. This squirrel was believed to be limited in range to the Coachella Valley region of Riverside County, California; however, results of both a morphological study and a genetic study indicate that its range may be substantially larger. Upon receipt of a finalized report detailing the methods and results of the genetic study, the Service will make a determination as to whether listing of *S. t. chlorus* is still warranted. Primary habitat for the Palm Springs round-tailed ground squirrel is the dunes and hummocks associated with *Prosopis glandulosa* var. *torreyana* (honey mesquite) and to a lesser extent those dunes and hummocks associated with *Larrea tridentata* (creosote), or other vegetation. Rapid growth of desert cities such as Palm Springs and Palm Desert in the Coachella Valley has raised concerns about the conservation of the Palm Springs round-tailed ground squirrel. Urban development and drops in the groundwater table have eliminated approximately 90 percent of the honey mesquite in the Coachella Valley. Furthermore, urban development has fragmented habitat occupied by this squirrel thereby isolating populations. The high rate of urban development and associated lowering of the groundwater table that was likely historically responsible for the high losses of honey mesquite sand dune/hummocks habitat continues today. We continue to assign the Palm Springs ground squirrel subspecies an LPN of 3 because the threats are ongoing and are of a high magnitude as they affect a large portion of its range and significantly affect this subspecies' survival.

Southern Idaho ground squirrel (*Spermophilus brunneus endemicus*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The southern Idaho ground squirrel is endemic to four counties in southwest Idaho; its total known range is approximately 425,630 hectares (1,051,752 acres). Threats to southern Idaho ground squirrels include: habitat degradation and fragmentation; direct killing from shooting, trapping, or poisoning; predation; competition with Columbian ground squirrels; and inadequacy of existing regulatory mechanisms. Habitat degradation and fragmentation appear to be the primary threats to the species. Nonnative annuals now dominate much of this species' range, have changed the species composition of vegetation used as forage for the southern Idaho ground squirrel, and have altered the fire regime by accelerating the frequency of wildfire. Habitat deterioration, destruction, and fragmentation contribute to the current patchy distribution of southern Idaho ground squirrels. Based on recent genetic work, southern Idaho ground squirrels are subject to more genetic drift and inbreeding than expected.

Two Candidate Conservation Agreements with Assurances (CCAAs) have been completed for this species in recent years. Both CCAAs include conservation measures that provide additional protection to southern Idaho ground squirrels from recreational shooting and other direct killing on enrolled lands, and also allow the State of Idaho, the Service and BLM to investigate ways of restoring currently degraded habitat. At this time, the acreage enrolled through these two CCAAs is approximately 38,756 hectares (95,767 acres), or 9 percent of the known range. While the ongoing conservation efforts have helped to reduce the magnitude of threats to moderate, habitat degradation remains the primary threat to the species throughout most of its range. This threat is imminent due to the ongoing and increasing prevalence and dominance of nonnative vegetation, and the current patchy distribution of the species. Thus, we assign an LPN of 9 to this subspecies.

Washington ground squirrel (*Spermophilus washingtoni*) – The following summary is based on information contained in our files and in the petition we received on March 2, 2000. The Washington ground squirrel is endemic to the Deschutes-Columbia Plateau sagebrush-steppe and grassland communities in eastern Oregon and south-central Washington. Although widely abundant historically, recent surveys suggest that its current range has contracted toward the center of its historical range. Approximately two-thirds of the Washington ground

squirrel's total historical range has been converted to agricultural and residential uses. The most contiguous, least-disturbed expanse of suitable habitat within the species' range occurs on the privately owned Threemile Canyon Farms and on the Naval Weapons Systems Training Facility near Boardman, Oregon. In Washington, the largest expanse of known suitable habitat occurs on State and Federal lands.

Agricultural, residential, and wind power development, among other forms of development, continue to eliminate Washington ground squirrel habitat in portions of the species' range. Throughout much of their range, Washington ground squirrels are threatened by the establishment and spread of invasive plant species, particularly cheatgrass, which alter available cover, food quantity and quality, and increases fire intervals. Additional threats include habitat fragmentation, recreational shooting, genetic isolation and drift, and predation. Potential threats include disease, drought, and possible competition with related species in disturbed habitat at the periphery of their range. In Oregon, some threats are being addressed as a result of the State listing of this species, and by implementation of the Threemile Canyon Farms Multi-Species Candidate Conservation Agreement with Assurances (CCAA). In Washington, there are currently no formal agreements with private landowners or with State or Federal agencies to protect the Washington ground squirrel. Additionally, no State or Federal management plans have been developed that specifically address the needs of the species or its habitat. Since current and potential threats are widespread and, in some cases, severe, we conclude the magnitude of threats remains high. The Washington ground squirrel has both imminent and nonimminent threats. At a rangewide scale, we conclude the threats are nonimminent based largely on the following: The CCAA addressed the imminent loss of a large portion of habitat to agriculture, there are no other large-scale efforts to convert suitable habitat to agriculture, and wind power project impacts can be minimized through compliance with the Oregon State Endangered Species Act (OESA) or the Columbia Basin Ecoregion wind energy siting and permitting guidelines. The potential development of shooting ranges on the Naval Weapons Systems Training Facility is nonimminent because the proposed action is still being developed, making us unable to assess its timing and impact, which could be minimized through compliance with the OESA. We, therefore, have retained an LPN of 5 for this species.

Birds

Spotless crake, American Samoa DPS (*Porzana tabuensis*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Porzana tabuensis* is a small, dark, cryptic rail found in wetlands and rank scrub or forest in the Philippines, Australia, Fiji, Tonga, Society Islands, Marquesas, Independent Samoa, and American Samoa (Ofu, Tau). The genus *Porzana* is widespread in the Pacific, where it is represented by numerous island-endemic and flightless species (many of which are extinct as a result of anthropogenic disturbances) as well as several more cosmopolitan species, including *P. tabuensis*. No subspecies of *P. tabuensis* are recognized. The American Samoa population is the only population of spotless crakes under U.S. jurisdiction. The available information indicates that distinct populations of the spotless crake, a species not noted for long-distance dispersal, are definable. The population of spotless crakes in American Samoa is discrete in relation to the remainder of the species as a whole, which is distributed in widely separated locations. Although the spotless crake (and other rails) have dispersed widely in the Pacific, island rails have tended to reduce or lose their power of flight over evolutionary time and so become isolated (and vulnerable to terrestrial predators such as rats). The population of this species in American Samoa is therefore distinct based on geographic and distributional isolation from spotless crake populations on other islands in the oceanic Pacific, the Philippines, and Australia. The American Samoa population of the spotless crake links the Central and Eastern Pacific portions of the species' range. The loss of this population would result in an increase of roughly 500 miles (805 kilometers) in the distance between the central and eastern Polynesian portions of the spotless crake's range, and could result in the isolation of the Marquesas and Society Islands populations by further limiting the potential for even rare genetic exchange. Based on the discreteness and significance of the American Samoa population of the spotless crake, we consider this population to be a distinct vertebrate population segment.

Threats to this population have not changed over the past year. The population in American Samoa is threatened by small population size, limited distribution, predation by nonnative mammals, continued development of wetland habitat, and natural catastrophes such as hurricanes. The co-occurrence of a known predator of ground-nesting birds, the Norway rat (*Rattus norvegicus*), along with the extremely restricted observed distribution and low numbers, indicate that the magnitude of the threats to the American Samoa DPS of the spotless crake continues to be high, because the threats significantly affect the species survival. The threats are ongoing, and therefore imminent. Based on this assessment of existing information about the imminence and high magnitude of these threats, we assigned the spotless crake an LPN of 3.

Yellow-billed cuckoo, western U.S. DPS (*Coccyzus americanus*) – The following summary is based on information contained in our files and the petition we received on February 9, 1998. See also our 12–month petition finding published on July 25, 2001 (66 FR 38611). The yellow-billed cuckoo (*Coccyzus americanus*) is a medium-sized bird of about 12 inches (30 centimeters) in length with a slender, long-tailed profile and a fairly stout and slightly down-curved bill. Plumage is grayish-brown above and white below, with rufous primary flight feathers with the tail feathers boldly patterned with black and white below. Western cuckoos breed in large blocks of riparian habitats (particularly woodlands with cottonwoods (*Populus fremontii*) and willows (*Salix* sp.). Dense understory foliage appears to be an important factor in nest-site selection, while cottonwood trees are an important foraging habitat in areas where the species has been studied in California. We consider the yellow-billed cuckoos that occur in the western United States as a distinct population segment (DPS). The area for this DPS is generally west of the crest of the Rocky Mountains.

The threats to the yellow-billed cuckoo include habitat loss, overgrazing, and pesticide application. Principal causes of riparian habitat losses are conversion to agricultural and other uses, dams and river flow management, stream channelization and stabilization, and livestock grazing. Available breeding habitats for cuckoos have also been substantially reduced in area and quality by groundwater pumping, and the replacement of native riparian habitats by invasive nonnative plants, particularly salt-cedar (*Tamarisk* sp.). Overuse by livestock has been a major factor in the degradation and modification of riparian habitats in the

western United States. The effects include changes in plant-community structure and species composition and in relative abundance of species and plant density. These changes are often linked to more widespread changes in watershed hydrology. Livestock grazing in riparian habitats typically results in reduction of plant-species diversity and density, especially of palatable broadleaf plants like willows and cottonwood saplings, and is one of the most common causes of riparian degradation. In addition to destruction and degradation of riparian habitats, pesticides may affect cuckoo populations. In areas where riparian habitat borders agricultural lands, e.g., in California's central valley, pesticide use may indirectly affect cuckoos by reducing prey numbers, or by poisoning nestlings if sprayed directly in areas where the birds are nesting. A group comprised of Federal, State, and non-governmental agencies organized by the Service is in the process of completing a range wide conservation assessment and strategy for the Western yellow-billed cuckoo. The assessment is in early stages of development with work beginning on a conservation strategy sometime in 2010. We retained an LPN of 3 for this population of yellow-billed cuckoo; the threats are ongoing and therefore imminent, and they are of a high magnitude, because ongoing habitat degradation significantly affects the survival and reproductive capacity of the DPS rangewide.

Friendly ground-dove, American Samoa DPS (*Gallicolumba stairi*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The genus *Gallicolumba* is distributed throughout the Pacific and Southeast Asia. The genus is represented in the oceanic Pacific by six species: Three are endemic to Micronesian islands or archipelagos, two are endemic to island groups in French Polynesia, and *G. stairi* is endemic to Samoa, Tonga, and Fiji. Some authors recognize two subspecies of the friendly ground-dove, one, slightly smaller, in the Samoan archipelago (*G. s. stairi*), and one in Tonga and Fiji (*G. s. vitiensis*), but because morphological differences between the two are minimal, we are not recognizing separate subspecies at this time.

In American Samoa, the friendly ground-dove has been found on the islands of Ofu and Olosega (Manua Group). Threats to this subspecies have not changed over the past year. Predation by nonnative species and natural catastrophes such as hurricanes are the primary threats to the subspecies. Of these, predation by nonnative species is thought to be occurring now and likely has been occurring for several decades. This predation may be an important impediment to increasing the population. Predation by introduced species has played a significant role in reducing, limiting, and extirpating populations of island birds, especially ground-nesters, in the Pacific and other locations worldwide. Nonnative predators known or thought to occur in the range of the friendly ground-dove in American Samoa are feral cats (*Felis catus*), Polynesian rats (*Rattus exulans*), black rats (*R. rattus*), and Norway rats (*R. norvegicus*).

In January 2004 and February of 2005, hurricanes virtually destroyed the habitat of *G. stairi* in an area on Olosega Island where the species had been most frequently recorded. Although this species has coexisted with severe storms for millennia, this example illustrates the potential for natural disturbance to exacerbate the effect of anthropogenic disturbance on small populations. Consistent monitoring using a variety of methods over the last 5 years yielded few observations and no change in the the relative abundance of this taxon in American Samoa. The total population size is poorly known, but is unlikely to number more than a few hundred pairs. The distribution of the friendly ground-dove is limited to steep, forested slopes with an open understory and a substrate of fine scree or exposed earth; this habitat is not common in American Samoa. The threats are ongoing and, therefore imminent and the magnitude is moderate because the relative abundance has remained the same for several years. Thus, we assign this subspecies an LPN of 9.

Streaked horned lark (*Eremophila alpestris strigata*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on December 11, 2002. The streaked horned lark occurs in Washington and Oregon, and is thought to be extirpated from British Columbia, Canada. The streaked horned lark nests on bare ground in sparsely vegetated sites in short-grass dominated habitats, such as native prairies, coastal dunes, fallow agricultural fields, seasonal wetlands, moderately to heavily grazed pastures, seasonal mudflats, airports, and dredge deposition sites in and along the tidal reach of the Columbia River. In Washington, surveys show that there are approximately 330 remaining breeding birds. In Oregon, the breeding population is estimated to more than 500 birds.

The streaked horned lark's breeding habitat continues to be threatened by loss and degradation due to conversion of native grasslands to other uses (such as agriculture, homes, recreational areas, and industry), encroachment of woody vegetation, and invasion of nonnative plant species (e.g., Scot's broom, sod-forming grasses, and beachgrasses). Native prairies have been nearly eliminated throughout the range of the species. It is estimated that less than 1 to 3 percent of the native grassland and savanna remains. And those areas that remain have been invaded by nonnative sod-forming grasses. Coastal nesting areas have suffered the same fate. A recent purchase of prairie lands in Washington has secured habitat that would have been developed. Its status as suitable lark nesting habitat is unknown.

Wintering habitats are seemingly few, and are susceptible to unpredictable conversion to unsuitable overwintering habitat, plant succession, and invasion by nonnative plants. Where larks inhabit manmade habitats similar in structure to native prairies (such as airports, military reservations, agricultural fields, and dredge-formed islands), or where they occur adjacent to human habitation, they are subjected to a variety of unintentional human disturbances such as mowing, recreational and military activities, plowing, flooding, and dredge material deposition during the nesting season, as well as intentional disturbances such as at the McChord Air Forece Base (AFB) where falcons and dogs are used to haze birds in order to avoid aircraft collisions. In some areas, however, landowners have taken steps to improve habitat for streaked horned lark nesting.

The magnitude of threat is high due to small populations with low genetic diversity, rapidly declining populations, and patchy and isolated habitats in areas desirable for development, many of which remain unsecured. The threat of invasive plant species is high and constant, aside from a few restoration sites. The numbers of individuals are low and the numbers of populations are few. Overwintering birds are concentrated in larger flocks and subject to unpredictable wintering habitat loss (especially in Oregon), potentially affecting a large portion of the population at one time. In Washington, known populations occur on airports, military bases, coastal beaches, and Columbia River islands, where management, training activities, recreation, and dredge material deposition continue to negatively

impact streaked horned lark breeding and wintering (although current work being conducted by The Nature Conservancy may lessen this last threat). In Oregon, breeding and wintering sites occur on Columbia River islands, in cultivated grass fields, grazed pastures, fallow fields, roadside shoulders, Christmas tree farms, seasonal wetlands, restored wet prairie, and wetland mudflats. Such areas continue to be subject to negative impacts such as dredge material deposition, development, plowing, mowing, pesticide and herbicide applications, trampling, vehicle traffic, and recreation.

Threats are imminent, as a result of continued loss of suitable lark habitat, high nest-predation rates, and low adult survival. Loss of habitat is a result of plans for development on and adjacent to several of its nesting areas, including planned and/or continued expansions of the Fort Lewis Gray Army Airfield West Ramp and the Olympia Airport. Wintering populations are at risk in Oregon due to the manner in which larks gather in large flocks that are vulnerable to stochastic events, and also due to the fact that their wintering habitat occurs on privately owned agricultural lands that are subject to unpredictable conversion. Other ongoing threats include the use of falcons and dogs to haze breeding birds at McChord AFB, the annual Air Force military training Rodeo event on McChord AFB which included firebombing on top of lark nesting habitat, and the Air Expo on McChord AFB. These two events usually occur in alternate years. Based on imminent threats of a high magnitude, we continue to assign an LPN of 3 to this subspecies.

Red knot (*Calidris canutus rufa*) – The following summary is based on information contained in our files and information provided by petitioners. Four petitions to emergency list the red knot have been received: one on August 9, 2004, two others on August 5, 2005, and the most recent on February 27, 2008. The *rufa* subspecies is one of six recognized subspecies of red knot and one of three subspecies occurring in North America. This subspecies makes one of the longest distance migrations known in the animal kingdom, as it travels between breeding areas in the central Canadian Arctic and wintering areas that are primarily in southern South America along the coast of Chile and Argentina. They migrate along the Atlantic coast of the United States, where they may be found from Maine to Florida.

The Delaware Bay area (in Delaware and New Jersey) is the largest known spring migration stopover area, with far fewer migrants congregating elsewhere along the Atlantic coast. The concentration in the Delaware Bay area occurs from the middle of May to early June, corresponding to the spawning season of horseshoe crabs. The knots feed on horseshoe crab eggs, rebuilding energy reserves needed to complete migrations to the Arctic and arrive on the breeding grounds in good condition. In the past, horseshoe crab eggs at Delaware Bay were so numerous that a knot could eat enough in two to three weeks to double its weight.

Surveys at wintering areas and at Delaware Bay during spring migration indicate a substantial decline in the red knot in recent years. At the Delaware Bay area, peak counts between 1982 and 1998 were as high as 95,360 individuals. Counts may vary considerably between years. Some of the fluctuations can be attributed to predator-prey cycles in the breeding grounds, and counts show that knots rebound from such reductions. Research shows that since 1998, a high proportion of red knots leaving the Delaware Bay failed to achieve threshold departure masses needed to fly to breeding grounds and survive an initial few days of snow cover, and this corresponded to reduced annual survival rates and reduced reproductive success. Recently, peak counts at the Delaware Bay area have been lower than in the past and do not show a rebound. The peaks were 13,315 in 2004; 15,345 in 2005; 13,455 in 2006; 12,375 in 2007; and 15,395 in 2008. Counts in recent years at the principal wintering areas in South America also are substantially lower than in the past.

The primary factor threatening the red knot is destruction and modification of its habitat, particularly the reduction in key food resources resulting from reductions in horseshoe crabs, which are harvested primarily for use as bait and secondarily to support a biomedical industry. Commercial harvest increased substantially in the 1990s. Since 1999, a series of timing restrictions and substantially lower harvest quotas have been adopted by the Atlantic States Marine Fisheries Commission (ASMFC), as well as by the States of New Jersey and Delaware. In May 2006, the ASMFC adopted restrictions effective from October 1, 2006, through September 30, 2008, including a prohibition on harvest and landing of horseshoe crabs in New Jersey and Delaware from January 1 through June 7; harvest of males only from June 8 through December 31; and harvest limited to no more than 100,000 horseshoe crabs per State per year. The ASMFC also adopted other restrictions applicable to Maryland and Virginia. In September 2008, the ASMFC Horseshoe Crab Management Board approved an addendum extending harvest restrictions through October 31, 2009. New Jersey established regulations in 2006 which superseded ASMFC restrictions; resulting in a moratorium on all horseshoe crab harvest in New Jersey from May 15, 2006, through June 7, 2008. In March 2008, New Jersey passed legislation imposing an open-ended moratorium on horseshoe crab harvest or landing within the State until such time as the red knot has fully recovered. In February 2007, Delaware imposed a 2–year moratorium, effective January 1, 2007, on harvest of horseshoe crabs within Delaware lands or waters. In June 2007, following litigation by two businesses involved in the harvesting and sale of horseshoe crabs, Delaware's moratorium was overturned. Consequently Delaware developed regulations allowing for a male-only horseshoe crab harvest, consistent with restrictions adopted by ASMFC. In April 2009, the Maryland Department of Natural Resources implemented a 2:1 male to female horseshoe crab harvest ratio within Maryland waters.

The reductions in commercial harvest since 1999 are substantial: In 1999 in Delaware and New Jersey, 726,660 horseshoe crab landings for bait were reported, compared to 173,177 in 2004 and a preliminary 2007 report of 76,663 crabs landed for bait in Delaware and no horseshoe crabs landed in New Jersey as a result of the State-imposed harvest moratorium. However, scientists do not know whether horseshoe crab populations will rebuild or how long a lag time there may be in increased availability of eggs, as the species needs 8-10 years to reach sexual maturity, and other key information for estimating population response is lacking. Surveys in Delaware Bay of horseshoe crab spawning activity following implementation of additional harvest restrictions show that female horseshoe crab spawning activity in Delaware Bay has been stable for the overall period of 1999 through 2007 and male horseshoe crab spawning increased during that period. Spawning was likely suppressed in 2008 by low water temperatures resulting from a coastal storm. Preliminary information for 2009 indicates that a high proportion of red knots at the Delaware Bay stopover attained threshold weight gains and birds left the Delaware Bay stopover in good condition. This weight gain indicates that red knots found sufficient horseshoe crab eggs or alternate forage

resources during the 2009 stopover. However, it remains to be seen if this will be a long-term trend.

The numbers of red knots at key wintering areas in South America remained relatively steady from 2005 through 2007, inspiring some optimism that the declining trend may have ceased or slowed. In 2008, counts of red knots within principal wintering areas showed an all-time low of only 14,800 red knots, but then increased to 17,780 in 2009, similar to numbers found during 2005-2007. Presence of an increased number of juveniles and an overall increase in red knots in principal wintering areas likely indicates a good breeding season in the Arctic in summer 2008. However, the long-term trend of counts of red knots within the principal wintering areas in Chile and Argentina shows a decline of nearly 75 percent from 1985 to 2009.

Other identified threat factors include habitat destruction due to beach erosion and various shoreline protection and stabilization projects that are affecting areas used by migrating knots for foraging, the inadequacy of existing regulatory mechanisms, human disturbance, and competition with other species for limited food resources. Also, the concentration of red knots in the Delaware Bay areas and at a relatively small number of wintering areas makes the species vulnerable to potential large-scale events such as oil spills or severe weather. Overall, we conclude that the threats, in particular the modification of habitat through harvesting of horseshoe crabs, are severe enough to put the viability of the knot at substantial risk and is therefore of a high magnitude. The threats are currently occurring, and therefore imminent because of continuing suppressed horseshoe-crab-egg forage conditions for red knot within the Delaware Bay stopover. Based on imminent threats of a high magnitude, we retain an LPN of 3 for this species.

Yellow-billed loon (*Gavia adamsii*) – The following summary is based on information contained in our files and the petition we received on April 5, 2004. The yellow-billed loon is a migratory bird with solitary pairs breeding on lakes in the arctic tundra of the United States, Russia, and Canada from June to September. During the remainder of the year, the species winters in more southern coastal waters of the Pacific Ocean and the Norway and North Seas. During most of the year, individual yellow-billed loons are so widely dispersed that high adult mortality from any single factor is unlikely. However, during migration, yellow-billed loons are more concentrated and are subject to subsistence harvest that at current levels appears to be unsustainable, based on the best available information; the population could decline substantially if such harvest continues. Future subsistence harvests in Alaska, by themselves, constitute a threat to the species rangewide. This subsistence harvest is occurring despite the species being closed to hunting under the Migratory Bird Treaty Act. In addition, up to several hundred yellow-billed loons may be taken annually on Russian breeding grounds, and small numbers of yellow-billed loons are reported in harvests in other areas in Alaska outside of the subsistence harvet area and in Canada. Other risk factors evaluated, including oil and gas development (i.e., disturbance, changes in freshwater chemistry and pollutant loads, and changes in freshwater hydrology); pollution; overfishing; climate change; vessel traffic; commercial- and subsistence-fishery bycatch; and contaminants other than those associated with oil and gas, were not found to be threats to the species. Although these other risk factors may not rise to the level of a threat individually, when taken collectively with the effects of subsistence hunting in other areas, they may reduce the rangewide population even further. One or more of the threats discussed above is occurring throughout the range of the yellow-billed loon, either in its breeding or wintering grounds, or during migration; therefore, the threats are imminent. The magnitude of the primary threat to the species, subsistence harvest, is moderate. Although subsistence harvest is ongoing, the numbers taken have varied substantially between years. Thus, we assigned the yellow-billed loon an LPN of 8.

Kittlitz's murrelet (*Brachyramphus brevirostris*) – The following summary is based on information contained in our files and the petition we received on May 9, 2001. Kittlitz's murrelet is a small diving seabird whose entire North American population, and most of the world's population, inhabits Alaskan coastal waters discontinuously from Point Lay south to northern portions of Southeast Alaska. Kittlitz's murrelets are associated with tidewater glaciers. The current population estimate for Kittlitz's murrelets in Alaska is approximately 19,578 birds. Kittlitz's murrelets in Alaska have declined at a rate of up to 18 percent per year from 1989 to 2000 and new survey information supports and strengthens the negative population trend estimates that have been previously reported.

Threats to Kittlitz's murrelets include large-scale processes such as global climate change and marine climate regime shift. These large-scale processes may influence Kittlitz's murrelet survival and reproduction. Glacial retreat, a global phenomenon that affects many of the glaciers where Kittlitz's murrelets are found, is associated with changing forage fish availability and may result in increased predation. Other ongoing threats include oil spills, bycatch in commercial gillnet fisheries, and disturbance by tour boats. Kittlitz's murrelets are believed to have been seriously affected by the *Exxon Valdez* oil spill in Prince William Sound in 1989. Catastrophic events such as oil spills could have a significant negative effect on the population of this already diminished species. Susceptibility to mortality as bycatch in commercial fishing could be a significant factor in their population decline; Kittlitz's murrelets are caught in gillnets in numbers disproportionate to their density. Tour boat visitation to glacial fjords is a growing industry, and this activity may increasingly disrupt Kittlitz's murrelet feeding behavior; tour boats may also provide artificial perch sites for avian predators.

Based on the observed population trajectory and the severity of ongoing threats (rapid glacial retreat, acute and chronic oil spills, commercial gillnet fishing, and human disturbance from tour boats), the threats to this species are high in magnitude and imminent. Therefore, we assigned an LPN of 2 to this species.

Xantus's murrelet (*Synthliboramphus hypoleucus*) – The following summary is based on information contained in our files and the petition we received on April 16, 2002. The Xantus's murrelet is a small seabird in the Alcid family that occurs along the west coast of North America in the United States and Mexico. The species has a limited breeding distribution, nesting only on the Channel Islands in southern California and on islands off the west coast of Baja California, Mexico. Although data on population trends are scarce, the population is suspected to have declined greatly over the last century, mainly due to introduced predators such as rats (*Rattus* sp.) and feral cats (*Felis catus*) to nesting islands, with possible extirpations on three islands in Mexico. A dramatic decline (up to 70 percent) from 1977 to 1991 was detected at the largest nesting colony in southern California, possibly due to high levels of predation on eggs by the endemic deer mouse (*Peromyscus*

maniculatus elusus). Identified threats include introduced predators at nesting colonies, oil spills and oil pollution, reduced prey availability, human disturbance, and artificial light pollution.

Although substantial declines in the Xantus's murrelet population likely occurred over the last century, some of the largest threats are being addressed, and, to some degree, ameliorated. Declines and possible extirpations at several nesting colonies were thought to have been caused by nonnative predators, which have been removed from many of the islands where they once occurred. Most notably, since 1994, Island Conservation and Ecology Group has systematically removed rats, cats, and dogs from every murrelet nesting colony in Mexico, with the exception of cats and dogs on Guadalupe Island. In 2002, rats were eradicated from Anacapa Island in southern California, which has resulted in improvements in reproductive success at that island. In southern California, there are also plans to remove rats from San Miguel Island, and to restore nesting habitat on Santa Barbara Island through the Montrose Settlements Restoration Project, which may benefit the Xantus's murrelet population at those islands.

Artificial lighting from squid fishing and other vessels, or lights on islands, remains a potential threat to the species. Bright lights make Xantus's murrelets more susceptible to predation, and they can also become disoriented and exhausted from continual attraction to bright lights. Chicks can become disoriented and separated from their parents at sea, which could result in death of the dependent chicks. High-wattage lighting on commercial market squid (*Loligo opalescens*) fishing vessels used at night to attract squid to the surface of the water in the Channel Islands was the suspected cause of unusually high predation on Xantus's murrelets by western gulls and barn owls at Santa Barbara Island in 1999. To address this threat, in 2000, the California Fish and Game Commission required light shields and a limit of 30,000 watts per boat; it is unknown if this is sufficient to reduce impacts. While squid fishing has not occurred at a particularly noticeable level near any of the colonies in the Channel Islands since 1999, this remains a potential future threat.

A proposal to build three liquid natural gas facilities near the Channel Islands could cause impacts to the nesting colonies. Although, none of these facilities would be directly adjacent to nesting colonies where their impacts would be expected to be more significant, these facilities would include bright lights at night and lights from visiting tanker vessels, noise from the facilities and from helicopters visiting the facilities, and potential oil spills associated with visiting tanker vessels. However, these facilities are early in complex and long-term planning processes, and it is possible that none of these facilities will be built.

In summary, the remaining threats to the species are of high magnitude since they have the potential to result in mortality for a large portion of the species' range. However, the threats are nonimminent since they are not currently occurring at most of the murrelet nesting sites. Therefore, we retained an LPN of 5 for this species.

Lesser prairie-chicken (*Tympanuchus pallidicinctus*) - The following summary is based on information contained in our files and the petition received on October 5, 1995. Additional information can be found in the 12–month finding published on June 7, 1998 (63 FR 31400). Biologists estimate that the occupied range has declined by 92 percent since the 1800s. The most serious threats to the lesser prairie-chicken are loss of habitat from conversion of native rangelands to introduced forages and cultivation, conversion of suitable restored habitat in the Conservation Reserve Program to cropland, cumulative habitat degradation caused by severe grazing, and energy development, including wind, oil, and gas development. Additional threats are woody plant invasion of open prairies due to fire suppression, herbicide use (including resumption of herbicide use in shinnery oak habitat), and habitat fragmentation caused by structural and transportation developments. Many of these threats may exacerbate the normal effects of periodic drought on lesser prairie-chicken populations. In many cases, the remaining suitable habitat has become fragmented by the spatial arrangement of these individual threats. Habitat fragmentation can be a threat to the species through several mechanisms: Remaining habitat patches may become smaller than necessary to meet the requirements of individuals and populations, necessary habitat heterogeneity may be lost to areas of homogeneous habitat structure, and the probability of recolonization decreases as the distance between suitable habitat patches expands. We have determined that the overall magnitude of threats to the lesser prairie-chicken throughout its range is high, and that the threats are ongoing, and thus imminent. Consequently, we have assigned an LPN of 2 to this species.

Greater sage-grouse (*Centrocercus urophasianus*), Columbia Basin DPS – For the reasons discussed below, we have not included new information in our finding with regard to the Columbia Basin DPS of the greater sage-grouse in this notice. On May 14, 1999, we received a petition requesting the listing of the Washington population of the western sage grouse (*C. u. phaios*). On May 7, 2001, we concluded that listing the Columbia Basin DPS of western sage grouse was warranted, but precluded by higher priority listing actions (66 FR 22984); this population was historically found in northern Oregon and central Washington. Following our May 7, 2001, finding, the Service received additional petitions requesting listing actions for various other greater sage-grouse populations, including one for the nominal western subspecies, dated January 24, 2002, and three for the entire species, dated June 18, 2002, and March 19 and December 22, 2003. The Service subsequently found that the petition for the western subspecies did not present substantial information (68 FR 6500), and that listing the greater sage-grouse throughout its historical range was not warranted (70 FR 2244). Legal actions are still pending for these latter findings, which have been remanded to the Service for further consideration. In response, we initiated a new rangewide status review for the entire species (73 FR 10218). We will update our candidate assessment and publish a new finding for the Columbia Basin DPS in the **Federal Register** following completion of the new range wide status review for the greater sage-grouse.

Band-rumped storm-petrel, Hawaii DPS (*Oceanodroma castro*) – The following summary is based on information contained in our files and the petition we received on May 8, 1989. No new information was provided in the second petition received on May 11, 2004. The band-rumped storm-petrel is a small seabird that is found in several areas of the subtropical Pacific and Atlantic Oceans. In the Pacific, there are three widely separated breeding populations – one in Japan, one in Hawaii, and one in the Galapagos. Populations in Japan and the Galapagos are comparatively large and number in the thousands, while the Hawaiian birds represent a small, remnant population of possibly only a few hundred pairs. Band-rumped storm-petrels are most commonly found in close proximity to breeding islands. The three populations in the Pacific are separated by long distances across the

ocean where birds are not found. Extensive at-sea surveys of the Pacific have revealed a broad gap in distribution of the band-rumped storm-petrel to the east and west of the Hawaiian Islands, indicating that the distribution of birds in the central Pacific around Hawaii is disjunct from other nesting areas. The available information indicates that distinct populations of band-rumped storm-petrels are definable and that the Hawaiian population is distinct based on geographic and distributional isolation from other band-rumped storm-petrel populations in Japan, the Galapagos, and the Atlantic Ocean. A population also can be considered discrete if it is delimited by international boundaries that have differences in management control of the species. The Hawaiian population of the band-rumped storm-petrel is the only population within U.S. borders or under U.S. jurisdiction. Loss of the Hawaiian population would cause a significant gap in the distribution of the band-rumped storm-petrel in the Pacific, and could result in the complete isolation of the Galapagos and Japan populations without even occasional genetic exchanges. Therefore, the population is both discrete and significant, and constitues a DPS.

The band-rumped storm-petrel probably was common on all of the main Hawaiian Islands when Polynesians arrived about 1,500 years ago, based on storm-petrel bones found in middens on the island of Hawaii and in excavation sites on Oahu and Molokai. Nesting colonies of this species in the Hawaiian Islands currently are restricted to remote cliffs on Kauai and Lehua Island and high-elevation lava fields on Hawaii. Vocalizations of the species were heard in Haleakala Crater on Maui as recently as 2006; however, no nesting sites have been located on the island to date. The significant reduction in numbers and range of the band-rumped storm-petrel is due primarily to predation by nonnative predators introduced by humans, including the domestic cat (*Felis catus*), small Indian mongoose (*Herpestes auropunctatus*), common barn owl (*Tyto alba*), black rat (*R. rattus*), Polynesian rat (*R. exulans*), and Norway rat (*R. norvegicus*), which occur throughout the main Hawaiian Islands, with the exception of the mongoose, which is not established on Kauai. Attraction of fledglings to artificial lights, which disrupts their night-time navigation, resulting in collisions with building and other objects, and collisions with artificial structures such as communication towers and utility lines are also threats. Erosion of nest sites caused by the actions of nonnative ungulates is a potential threat in some locations. Efforts are under way in some areas to reduce light pollution and mitigate the threat of collisions, but there are no large-scale efforts to control nonnative predators in the Hawaiian Islands. The threats are imminent because they are ongoing, and they are of a high magnitude because they can significantly affect the survival of this DPS. Therefore, we assign this distinct population segment an LPN of 3.

Elfin-woods warbler (*Dendroica angelae*) – See above in ''*Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Reptiles

Northern Mexican Gartersnake (*Thamnophis eques megalops*) – The following summary is based on information contained in our files. The northern Mexican gartersnake generally occurs in three types of habitat: (1) ponds and cienegas; (2) lowland river riparian forests and woodlands; and (3) upland stream gallery forests. Within the United States, the distribution of the northern Mexican gartersnake has been reduced by close to 90 percent and it occurs in fragmented populations within the middle/upper Verde River drainage, middle/lower Tonto Creek, and the upper Santa Cruz River, as well as in a small number of isolated wetland habitats in southeastern Arizona; its status in New Mexico is uncertain. Within Mexico, the northern Mexican gartersnake is distributed along the Sierra Madre Occidental and the Mexican Plateau in the Mexican states of Sonora, Chihuahua, Durango, Coahila, Zacatecas, Guanajuato, Nayarit, Hidalgo, Jalisco, San Luis Potosí, Aguascalientes, Tlaxacala, Puebla, México, Michoacán, Oaxaca, Veracruz, and Querétaro. The primary threat to the northern Mexican gartersnake is competition and predation from nonnative species such as sportfish, bullfrogs, and crayfish. Degradation and elimination of its habitat and native prey base are also significant threats. Threats, particularly competition and predation by nonnative species, are high in magnitude since they result in direct mortality or reduced reproductive capacity and may be irreversible. The threats are ongoing and, therefore, imminent. Thus, we retained an LPN of 3 for this subspecies.

Sand dune lizard (*Sceloporus arenicolus*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Eastern massasauga rattlesnake (*Sistrurus catenatus catenatus*) – The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The eastern massasauga is one of three recognized subspecies of massasauga. It is a small, thick-bodied rattlesnake that occupies shallow wetlands and adjacent upland habitat in portions of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, Wisconsin, and Ontario.

Although the current range of *S. c. catenatus* resembles the subspecies' historical range, the geographic distribution has been restricted by the loss of the subspecies from much of the area within the boundaries of that range. Approximately 40 percent of the counties that were historically occupied by *S. c. catenatus* no longer support the subspecies. *S. c. catenatus* is currently listed as endangered or threatened in every State and province in which it occurs, except for Michigan, where it is designated as a species of special concern. Each State and Canadian province across the range of *S. c. catenatus* has lost more than 30 percent, and the majority more than 50 percent, of their historical populations. Furthermore, less than 35 percent of the remaining populations are considered secure. Approximately 59 percent of the remaining *S. c. catenatus* populations occur wholly or in part on public land, and Statewide or site-specific Candidate Conservation Agreements with Assurances (CCAAs) are currently being developed for many of these areas in Iowa, Illinois, Michigan, and Wisconsin. In 2004, a Candidate Conservation Agreement (CCA) with the Lake County Forest Preserve District in Illinois was completed, and in 2005, a CCA with the Forest Preserve District of Cook County in Illinois was completed. In 2006, a CCAA with the Ohio Department of Natural Resources Division of Natural Areas and Preserves was completed for Rome State Nature Preserve in Ashtabula County.

The magnitude of threats is moderate at this time. However, populations soon to be under CCAs and CCAAs have a low-to-moderate likelihood of persisting and remaining viable. Other populations are likely to suffer additional losses in abundance and genetic diversity and some will likely be extirpated unless

threats are removed in the near future. Declines have continued or may be accelerating in several States. Thus we are monitoring the status of this species to determine if a change in listing priority is warranted. Furthermore, we are working with several experts and partners in the development of an extinction risk model for the subspecies, and the results of this work may indicate that a change in listing priority number is appropriate. Threats of habitat modification, habitat succession, incompatible land management practices, illegal collection for the pet trade, and human persecution are ongoing and imminent threats to many remaining populations, particularly those inhabiting private lands. We retained an LPN of 9 for this subspecies.

Black pine snake (*Pituophis melanoleucus lodingi*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. There are historical records for the black pine snake from one parish in Louisiana, 14 counties in Mississippi, and 3 counties in Alabama west of the Mobile River Delta. Black pine snake surveys and trapping indicate that this species has been extirpated from Louisiana and from four counties in Mississippi. Moreover, the distribution of remaining populations has become highly restricted due to the destruction and fragmentation of the remaining longleaf pine habitat within the range of the subspecies. Most of the known Mississippi populations are concentrated on the DeSoto National Forest. Populations occurring on properties managed by State and other governmental agencies as gopher tortoise mitigation banks or wildlife sanctuaries represent the best opportunities for long-term survival of the subspecies in Alabama. Other factors affecting the black pine snake include vehicular mortality and low reproductive rates, which magnify the threats from destruction and fragmentation of longleaf pine habitat and increase the likelihood of local extinctions. Due to the imminent threats of high magnitude caused by the past destruction of most of the longleaf pine habitat of the black pine snake, and the continuing persistent degradation of what remains, we assigned an LPN of 3 to this subspecies.

Louisiana pine snake (*Pituophis ruthveni*) – The following summary is based on information contained in our files and the petition we received on July 19, 2000. The Louisiana pine snake historically occurred in the fire-maintained longleaf pine ecosystem within west-central Louisiana and extreme east-central Texas. Most of the historical longleaf pine habitat of the Louisiana pine snake has been destroyed or degraded due to logging, fire suppression, roadways, short-rotation silviculture, and grazing. In the absence of recurrent fire, suitable habitat conditions for the Louisiana pine snake and its primary prey, the Baird's pocket gopher (*Geomys breviceps*), are lost due to vegetative succession. The loss and fragmentation of the longleaf pine ecosystem has resulted in extant Louisiana pine snake populations that are isolated and small. Trapping and occurrence data indicate the Louisiana pine snake is currently restricted to seven disjunct populations; five of the populations occur on Federal lands and two occur mainly on private industrial timberlands. Currently occupied habitat in Louisiana and Texas is estimated to be approximately 163,000 acres, with 53 percent occurring on public lands and 47 percent in private ownership.

All remnant Louisiana pine snake populations have been affected by habitat loss and all require active habitat management. A Candidate Conservation Agreement (CCA) was completed in 2003 to maintain and enhance occupied and potential habitat on public lands, and to protect known Louisiana pine snake populations. On Federal lands, signatories of the Louisiana pine snake CCA currently conduct habitat management (i.e., prescribed burning and thinning) that is beneficial to the Louisiana pine snake. This proactive habitat management has likely slowed or reversed the rate of Louisiana pine snake habitat degradation on many portions of Federal lands. The largest extant Louisiana pine snake population exists on private industrial timberlands. Although two conservation areas are managed to benefit Louisiana pine snakes on the private property, the majority of the neighboring occupied habitat is threatened by land management activities (habitat conversion to short-rotation pine plantations) that decrease habitat quality.

Three of the remnant Louisiana pine snake populations may be vulnerable to decreased demographic viability or other factors associated with low population sizes and demographic isolation. Although these remnant Louisiana pine snake populations are intrinsically vulnerable and thus threatened by these factors, it is not known if they are presently actually affected by these threats. Because all extant populations are currently isolated and fragmented by habitat loss in the matrix between populations, there is little potential for dispersal among remnant populations or for the natural recolonization of vacant habitat patches. Thus, the loss of any remnant population is likely to be permanent. Other factors affecting the Louisiana pine snake throughout its range include low fecundity, which magnifies other threats and increases the likelihood of local extirpations, and vehicular mortality, which may significantly affect Louisiana pine snake populations.

While the extent of Louisiana pine snake habitat loss has been great in the past and much of the remaining habitat has been degraded, habitat loss does not represent an imminent threat, primarily because the rate of habitat loss appears to be declining on public lands. However, all populations require active habitat management, and the lack of adequate habitat remains a threat for several populations. The potential threats to a large percentage of extant Louisiana pine snake populations, coupled with the likely permanence of these effects and the species' low fecundity and low population sizes (based on capture rates and occurrence data), lead us to conclude that the threats have significant effect on the survival of the species and therefore remain high in magnitude. Based on nonimminent, high-magnitude threats, we assigned a LPN of 5 to this species.

Sonoyta mud turtle (*Kinosternon sonoriense longifemorale*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Sonoyta mud turtle occurs in a spring and pond at Quitobaquito Springs on Organ Pipe Cactus National Monument in Arizona, and in the Rio Sonoyta and Quitovac Spring of Sonora, Mexico. Loss and degradation of stream habitat from water diversion and groundwater pumping, along with its very limited distribution, is the primary threat to the Sonoyta mud turtle. Sonoyta mud turtles are highly aquatic and depend on permanent water for survival. The area of southwest Arizona and northern Sonora where the Sonoyta mud turtle occurs is one of the driest regions of the southwest. Due to continuing drought, irrigated agriculture, and development in the region, surface water in the Rio Sonoyta can be expected to dwindle further and therefore have a significant impact on the survival of this subspecies, which may also be vulnerable to aerial spraying of pesticides on nearby agricultural fields. We retained an LPN of 3 for this subspecies because threats

are of a high magnitude and continue to date, and therefore are imminent.

Amphibians

Columbia spotted frog, Great Basin DPS (*Rana luteiventris*) – The following summary is based on information contained in our files and the petition we received on May 1, 1989. Currently, Columbia spotted frogs appear to be widely distributed throughout southwestern Idaho, southeastern Oregon, and northeastern and central Nevada but local populations within this general area appear to be small and isolated from each other. Recent work by researchers in Idaho and Nevada has documented the loss of historically known sites, reduced numbers of individuals within local populations, and declines in the reproduction of those individuals.

Small highly fragmented populations, characteristic of the majority of existing populations of Columbia spotted frogs in the Great Basin, are highly susceptible to extinction processes. Poor management of Columbia spotted frog habitat, including water development, improper grazing, mining activities and nonnative species, have and continue to contribute to the degradation and fragmentation of habitat. Emerging fungal diseases such as chytridiomycosis and the spread of parasites are contributing factors to Columbia spotted frog population declines throughout portions of its range. Effects of climate change such as drought and stochastic events such as fire often have detrimental effects to small isolated populations and can often exacerbate existing threats. A 10–year Conservation Agreement/Strategy was signed in September 2003 for both the Northeast and the Toiyabe subpopulations in Nevada. The goals of the conservation agreements are to reduce threats to Columbia spotted frogs and their habitat to the extent necessary to prevent populations from becoming extirpated throughout all or a portion of their historical range and to maintain, enhance, and restore a sufficient number of populations of Columbia spotted frogs and their habitat to ensure their continued existence throughout their historical range. Additionally, a Candidate Conservation Agreement with Assurances was completed in 2006 for the Owyhee subpopulation at Sam Noble Springs, Idaho. While some threats to the species and its habitat (habitat modification and fragmentation, nonnative species, inadequate regulatory mechanisms, and climate change) occur rangewide but at various intensities, other threats (disease and mining) affect only local populations; overall, the magnitude of the threats is moderate. Based on ongoing, and therefore, imminent threats of moderate magnitude, we assigned a LPN of 9 to this DPS of the Columbia spotted frog.

Mountain yellow-legged frog, Sierra Nevada DPS (*Rana muscosa*) – The following summary is based on information contained in our files and the petition received on February 8, 2000. Also see our 12–month petition finding published on January 16, 2003 (68 FR 2283) and our amended 12–month petition finding published on June 25, 2007 (72 FR 34657). The mountain yellow-legged frog (*Rana mucosa*) inhabits the high-elevation lakes, ponds, and streams in the Sierra Nevada Mountains of California, from near 4,500 feet (ft) (1,370 meters (m)) to 12,000 ft (3,650 m). The distribution of the mountain yellow-legged frog is from Butte and Plumas Counties in the north to Tulare and Inyo Counties in the south. A separate population in southern California is already listed as endangered (67 FR 44382).

Based on mitochondrial DNA, and morphological, and acoustic studies, scientists recently recognized two distinct species of mountain yellow-legged frog in the Sierra Nevada, *R. muscosa* and *R. sierrae*. This taxonomic distinction has been recently adopted by the American Society of Ichthyologists and Herpetologists, the Herpetologists' League, and the Society for the Study of Amphibians and Reptiles. The recent study determined that two species exist, as described by Camp, but have different geographical ranges than first described. Camp described *R. muscosa* as only occurring in southern California. A recent study determined that *R. muscosa* also occurs in the southern portion of the Sierra Nevada and *R. sierrae* occurs both in the southern and northern portions of the Sierra Nevada with no range overlap. It is the population of *R. muscosa* found in the southern portion of the Sierra Nevada that is a candidate for listing. *R. sierrae* is not a candidate.

Predation by introduced trout is the best-documented cause of the decline of the Sierra Nevada mountain yellow-legged frog, because it has been repeatedly observed that nonnative fishes and mountain yellow-legged frogs rarely co-exist. Mountain yellow-legged frogs and trout (native and nonnative) do co-occur at some sites, but these co-occurrences probably are mountain yellow-legged frog populations with negative population growth rates in the absence of immigration. To help reverse the decline of the mountain yellow-legged frog, the Sequoia and Kings Canyon National Parks have been removing introduced trout since 2001. Over 18,000 introduced trout have been removed from 11 lakes since the project started in 2001. The lakes are completely-to-mostly fish-free, and substantial mountain yellow-legged frog population increases have resulted. The California Department of Fish and Game has also removed or is in the process of removing nonnative trout from a total of between 10 and 20 water bodies in the Inyo, Humboldt-Toiyabe, Sierra, and El Dorado National Forests. In the El Dorado National Forest golden trout were removed from Leland Lakes, and attempts have been made to remove trout from two sites near Gertrude Lake, three lakes in the Pyramid Creek watershed, and a tributary of Cole Creek; no data showing increase in mountain yellow-legged frogs at these sites were available.

In California, chytridiomycosis, more commonly known as chytrid fungus (*Batrachochytrium dendrobatidis*), has been detected in many amphibian species, including the mountain yellow-legged frog within the Sierra Nevada. Recent research has shown that this pathogenic fungus is widely distributed throughout the Sierra Nevada, and that infected mountain yellow-legged frogs die soon after metamorphosis. Several infected and uninfected populations were monitored in Sequoia and Kings Canyon National Parks over multiple years, documenting dramatic declines and extirpations in infected but not in uninfected populations. In the summer of 2005, of 43 populations assayed in Yosemite National Park, 39 were positive for chytrid fungus.

The current distribution of the Sierra Nevada mountain yellow-legged frog is restricted primarily to publicly managed lands at high elevations, including streams, lakes, ponds, and meadow wetlands located on national forests, including wilderness and nonwilderness on the forests, and national parks. In several areas where detailed studies of the effects of chytrid fungus on the mountain yellow-legged frog are on-going, substantial declines have been observed over the past several years. For example, in 2007 surveys in Yosemite National Park, mountain yellow-legged frogs were not detectable at 37 percent of 285 sites where they had been observed in 2000-2002; in 2005 in Sequoia and Kings Canyon National Parks, mountain yellow-legged frogs were not detected at 54 percent of sites where they had been recorded 3 to 8 years earlier. A compounding effect of disease-caused extinctions of mountain yellow-legged frogs is that recolonization may never occur, because streams connecting extirpated sites to

extant populations now contain introduced fishes, which act as barriers to frog movement within metapopulations. The most recent assessment of the species status in the Sierra Nevada indicates that mountain-yellow legged frogs occur at less than 8 percent of the sites from which they were historically observed. A group of prominent scientists further predict a 10-percent decline per year in the number of remaining *Rana mucosa* populations. Based on threats that are imminent (because they are ongoing) and high-magnitude (because they affect the survival of the DPS rangewide), we continue to assign the population of mountain yellow-legged frog in the Sierra Nevada an LPN of 3.

Oregon spotted frog (*Rana pretiosa*) – The following summary is based on information contained in our files and the petition we received on May 4, 1989. Historically, the Oregon spotted frog ranged from British Columbia to the Pit River drainage in northeastern California. Based on surveys of historical sites, the Oregon spotted frog is now absent from at least 76 percent of its former range. The majority of the remaining Oregon spotted frog populations are small and isolated.

The threats to the species' habitat include development, livestock grazing, introduction of nonnative plant species, vegetation succession, changes in hydrology due to construction of dams and alterations to seasonal flooding, lack of management of exotic vegetation, predators, and poor water quality. Additional threats to the species are predation by nonnative fish and introduced bullfrogs; competition with bullfrogs and nonnative fish for habitat; and diseases, such as oomycete water mold *Saprolegnia* and chytrid fungus infections. The magnitude of threat is high for this species because this wide range of threats to both individuals and their habitats could seriously reduce or eliminate any of these isolated populations and further reduce the species' range and potential survival. Habitat restoration and management actions have not prevented population declines. The threats are imminent because each population is faced with multiple ongoing and potential threats as identified above. Therefore, we retained an LPN of 2 for the Oregon spotted frog.

Relict leopard frog (*Rana onca*) – The following summary is based on information contained in our files and the petition we received on May 9, 2002. Natural relict leopard frog populations are currently only known to occur in two general areas in Nevada: Near the Overton Arm area of Lake Mead and Black Canyon below Lake Mead. These two areas comprise a small fraction of the historical distribution of the species, which included springs, streams, and wetlands within the Virgin River drainage downstream from the vicinity of Hurricane, Utah; along the Muddy River in Nevada; and along the Colorado River from its confluence with the Virgin River downstream to Black Canyon below Lake Mead in Nevada and Arizona.

Suggested factors contributing to the decline of the species include alteration of aquatic habitat due to agriculture and water development, including regulation of the Colorado River, and the introduction of exotic predators and competitors. In 2005, the National Park Service, in cooperation with the Service and various other Federal, State, and local partners, developed a conservation agreement and strategy that is intended to improve the status of the species through prescribed management actions and protection. Conservation actions identified for implementation in the agreement and strategy include captive rearing of tadpoles for translocation and refugium populations, habitat and natural history studies, habitat enhancement, population and habitat monitoring, and translocation. Conservation is proceeding under the agreement; however, additional time is needed to determine whether or not the agreement will be effective in eliminating or reducing the threats to the point that the relict leopard frog can be removed from candidate status. However, because of these conservation efforts, the magnitude of existing threats is moderate to low. These threats remain nonimminent since there are no pending projects or actions that would adversely affect frog populations or threaten surface water associated with known sites occupied by the frog. Therefore, we assigned an LPN of 11 to this species.

Ozark hellbender (*Cryptobranchus alleganiensis bishopi*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Austin blind salamander (*Eurycea waterlooensis*) – The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Austin blind salamander is known to occur in and around three of the four spring sites that comprise the Barton Springs complex in the City of Austin, Travis County, Texas. Primary threats to this species are degradation of water quality due to expanding urbanization. The Austin blind salamander depends on a constant supply of clean water from the Edwards Aquifer that discharges from Barton Springs for its survival. Urbanization dramatically alters the normal hydrologic regime and water quality of an area. Increased impervious cover caused by development increases the quantity and velocity of runoff that leads to erosion and greater pollution transport. Pollutants and contaminants that enter the Edwards Aquifer are discharged in salamander habitat at Barton Springs and have serious morphological and physiological effects to the salamander.

The Texas Commission on Environmental Quality adopted the Edwards Rules in 1995 and 1997, which require a number of water quality protection measures for new development occurring in the recharge and contributing zones of the Edwards Aquifer. However, Chapter 245 of the Texas Local Government Code permits ''grandfathering'' of state regulations. Grandfathering allows developments to be exempted from any new local or state requirements for water quality controls and impervious cover limits if the developments were planned prior to the implementation of such regulations. As a result of the grandfathering law, very few developments have followed these ordinances. New developments are still obligated to comply with regulations that were applicable at the time when project applications for development were first filed. In addition, it is significant that even if they were followed with every new development, these ordinances do not span the entire watershed for Barton Springs. Consequently, development occurring outside these jurisdictions can have negative consequences on water quality and thus have an impact on the species.

Water quality impacts threaten the continued existence of the Austin blind salamander by altering physical aquatic habitats and the food sources of the salamander. The threats are imminent because urbanization is ongoing and continues to expand over the Barton Springs Segment of the Edwards Aquifer and water quality continues to degrade. Although the City of Austin and many other partners are actively working on conservation of the Barton Springs salamander, and the Austin blind salamander benefits from all of the ongoing conservation actions that are being conducted for the Barton Springs salamander, these efforts have not yet been successful in improving water quality. In addition, the existence of the

species continues to be threatened by occasional hazardous chemical spills within the Barton Springs Segment of the Edwards Aquifer, which could result in direct mortality. Because the Austin blind salamander is known from only three clustered spring sites and must rely on clear, clean spring discharges from the Edwards Aquifer for its survival, degraded water quality poses a threat to the entire population, and is therefore a high-magnitude threat. Thus, we retain an LPN of 2 for this species.

Georgetown salamander (*Eurycea naufragia*) – The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Georgetown salamander is known from spring outlets along five tributaries to the San Gabriel River and one cave in the City of Georgetown, Williamson County, Texas. The Georgetown salamander has a very limited distribution and depends on a constant supply of clean water from the Northern Segment of the Edwards Aquifer for its survival.

Primary threats to this species are degradation of water quality due to expanding urbanization. Increased impervious cover by development increases the quantity and velocity of runoff that leads to erosion and greater pollution transport. Pollutants and contaminants that enter the Edwards Aquifer are discharged from spring outlets in salamander habitat and have serious morphological and physiological effects to the species. The Texas Commission on Environmental Quality (TCEQ) adopted the Edwards Rules in 1995 and 1997, which require a number of water quality protection measures for new development occurring in the recharge and contributing zones of the Edwards Aquifer. However, Chapter 245 of the Texas Local Government Code permits ''grandfathering'' of state regulations. Grandfathering allows developments to be exempted from any new local or state requirements for water quality controls and impervious cover limits if the developments were planned prior to the implementation of such regulations. As a result of the grandfathering law, very few developments have followed these ordinances. New developments are still obligated to comply with regulations that were applicable at the time when project applications were first filed. In addition, it is significant that even if they were followed with every new development, these ordinances do not span the entire watershed for the Edwards Aquifer. The TCEQ has developed voluntary water quality protection measures for development in the Edwards Aquifer region of Texas; however, it is unknown if these measures will be implemented throughout a large portion of the watershed or if they will be effective in maintaining or improving water quality. Therefore, we do not rely on the protection measures in our assessment of threats.

Development occurring outside the TCEQ's jurisdiction can have negative consequences on water quality and thus affect the species. Water quality impacts threaten the continued existence of the Georgetown salamander by altering physical aquatic habitats and the food sources of the salamander. The threats are imminent because urbanization is ongoing and continues to expand over the Northern Segment of the Edwards Aquifer. However, Williamson County and the Williamson County Conservation Foundation are actively working to protect habitat and acquire land within the contributing watershed for the Georgetown salamander. These conservation actions reduce the magnitude of the threat to the Georgetown salamander to a moderate level by reducing the amount of development occurring in the portion of the watershed that affects the species. Thus, we assigned an LPN of 8 for this species.

Jollyville Plateau salamander (*Eurycea tonkawae*) – The following summary is based on information gathered during a status review of this species (72 FR 71039, December 13, 2007). The Jollyville Plateau salamander occurs in the Jollyville Plateau and Brushy Creek areas of the Edwards Plateau in Travis and Williamson Counties, Texas. This species has a limited distribution and depends on a constant supply of clean water from the Northern Segment of the Edwards Aquifer for its survival. Primary threats to this species are degradation of water quality due to expanding urbanization. Increased impervious cover by development increases the quantity and velocity of runoff that leads to erosion and greater pollution transport. Pollutants and contaminants that enter the Edwards Aquifer are discharged from spring outlets in salamander habitat and have serious morphological and physiological effects on the species.

The Texas Commission on Environmental Quality adopted the Edwards Rules in 1995 and 1997, which require a number of water quality protection measures for new development occurring in the recharge and contributing zones of the Edwards Aquifer. However, Chapter 245 of the Texas Local Government Code permits ''grandfathering'' of state regulations. Grandfathering allows developments to be exempted from any new local or state requirements for water quality controls and impervious cover limits if the developments were planned prior to the implementation of such regulations. As a result of the grandfathering law, very few developments have followed these ordinances. New developments are still obligated to comply with regulations that were applicable at the time when project applications for development were first filed. In addition, it is significant that even if they were followed with every new development, these ordinances do not span the entire watershed for the Edwards Aquifer. The TCEQ has developed voluntary water quality protection measures for development in the Edwards Aquifer region of Texas; however, it is unknown if these measures will be implemented throughout a large portion of the watershed or if they will be effective in maintaining or improving water quality.

Water quality impacts currently threaten the continued existence of the Jollyville Plateau salamander by altering physical aquatic habitats and the food sources of the salamander, producing negative population responses. Such responses have been documented at both the individual level (mortalities and deformities) and the population level (significant declines in abundance over the last 10 years and extirpation at one site). We find the overall negative response by the salamander to be at a moderate level because deformities and deaths of salamanders have been limited in scope to a few localities and only one location may have experienced an extirpation. Otherwise, the current range of the salamander changed little from the known historical range. Thus, we retain an LPN of 8 for this species.

Salado salamander (*Eurycea chisholmensis*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Salado salamander is historically known from two spring sites, Big Boiling Springs and Robertson Springs, near Salado, Bell County, Texas. We have received only one anecdotal report of a salamander sighting in Big Boiling Springs in 2008; prior to that, the Salado salamander had not been sighted there since 1991. Robertson Springs is on private land and access to the site has not been granted. The last survey at Robertson Springs was in the early 1990s.

Primary threats to this species are habitat modification and degradation of water quality due to expanding

urbanization. The Salado salamander depends on a constant supply of clean water from the Northern Segment of the Edwards Aquifer for its survival. Pollutants and contaminants that enter the Edwards Aquifer discharge in salamander habitat and have morphological and physiological effects on the salamander. We do not know how likely spills are to occur within the contributing watersheds of the springs that support this species. However, several groundwater incidents have occurred within Salado salamander habitat in recent years. The salamander is vulnerable to catastrophic hazardous materials spills, groundwater contamination from the Northern Segment of the Edwards Aquifer, and impacts to its surface habitat. In addition, Big Boiling Springs is located near Interstate Highway 35 and in the center of the Village of Salado. Traffic and urbanization is likely to increase the threat of contamination of spills, higher levels of impervious cover, and subsequent impacts to groundwater. These threats significantly affect the survival of this species, and groundwater contamination and impacts to surface habitat are ongoing. Moreover, we do not have information that the magnitude or imminence of the threats to the species has changed since our previous assessment when we concluded there are ongoing, and therefore, imminent threats of a high magnitude. Therefore, we retained an LPN of 2 for this species.

Yosemite toad (*Bufo canorus*) – The following summary is based on information contained in our files and the petition we received on April 3, 2000. See also our 12–month petition finding published on December 10, 2002 (67 FR 75834). The Yosemite toad is a moderately sized toad with females having black spots edged with white or cream that are set against a grey, tan, or brown background. Males have a nearly uniform coloration of yellow-green to olive drab to greenish brown. The Yosemite toad is most likely to be found in areas with thick meadow vegetation or patches of low willows near or in water, and use rodent burrows for overwintering and temporary refuge during the summer. Breeding habitat includes the edges of wet meadows, slow flowing streams, shallow ponds and shallow areas of lakes. The historical range of the Yosemite toad in the Sierra Nevada occurs from the Blue Lakes region north of Ebbetts Pass (Alpine County) to south of Kaiser Pass in the Evolution Lake/Darwin Canyon area (Fresno County). The historical elevational range of the Yosemite toad is 1,460 to 3,630 m (4,790 to 11,910 ft).

The threats to the Yosemite toad include cattle grazing, timber harvesting, recreation, disease, and climate change. Inappropriate grazing has been shown to cause loss in vegetative cover and destroying peat layers in meadows, which lowers the groundwater table and summer flows. This may increase the stranding and mortality of tadpoles, or make these areas completely unsuitable for Yosemite toads. Grazing can also degrade or destroy moist upland areas used as non-breeding habitat by the Yosemite toad and collapse rodent burrows used by Yosemite toads as cover and hibernation sites. Timber harvesting and associated road development could severely alter the terrestrial environment and result in the reduction and occasional extirpation of amphibian populations in the Sierra Nevada. Some of these threats result in gaps in habitat which may act as dispersal barriers and contribute to the fragmentation of Yosemite toad habitat and populations. Trails (foot, horse, bicycle, or off-highway motor vehicle) compact soil in riparian habitat, which increases erosion, displaces vegetation, and can lower the water table. Trampling or the collapsing of rodent burrows by recreationists, pets, and vehicles could lead to direct mortality of all life stages of the Yosemite toad and disrupt their behavior. Various diseases have been confirmed in the Yosemite toad. Mass die-offs of amphibians have been attributed to: chytrid fungal infections of metamorphs and adults; *Saprolegnia* fungal infections of eggs; iridovirus infection of larvae, metamorphs, or adults; and bacterial infections. The Yosemite toad is likely exposed to a variety of pesticides and other chemicals throughout its range. Environmental contaminants could negatively affect the species by causing direct mortality; suppressing the immune system; disrupting breeding behavior, fertilization, growth or development of young; and disrupting the ability to avoid predation. There is no indication that any of these threats are ongoing or planned and the threats are therefore nonimminent. In addition, since there are a number of substantial populations and these threats tend to have localized effects, the threats are moderate to low in magnitude. In addition, almost all of the species' range occurs on Federal land, which protects the species from private development and facilitates management of the species by Federal agencies. We therefore retained an LPN of 11 for the Yosemite toad.

Black Warrior waterdog (*Necturus alabamensis*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Black Warrior waterdog is a salamander that inhabits streams above the Fall Line within the Black Warrior River Basin in Alabama. There is very little specific locality information available on the historical distribution of the Black Warrior waterdog since little attention was given to this species between its description in 1937 and the 1980s. At that time, there were a total of only 11 known historical records from 4 Alabama counties. Two of these sites have now been inundated by impoundments. Extensive survey work was conducted in the 1990s to look for additional populations. Currently, the species is known from 14 sites in 5 counties.

Water-quality degradation is the biggest threat to the continued existence of the Black Warrior waterdog. Most streams that have been surveyed for the waterdog showed evidence of pollution and many appeared biologically depauperate. Sources of point and nonpoint pollution in the Black Warrior River Basin have been numerous and widespread. Pollution is generated from inadequately treated effluent from industrial plants, sanitary landfills, sewage treatment plants, poultry operations, and cattle feedlots. Surface mining represents another threat to the biological integrity of waterdog habitat. Runoff from old, abandoned coal mines generates pollution through acidification, increased mineralization, and sediment loading. The North River, Locust Fork, and Mulberry Fork, all streams that this species inhabits, are on the Environmental Protection Agency's list of impaired waters. An additional threat to the Black Warrior waterdog is the creation of large impoundments that have flooded thousands of square hectares (acres) of its habitat. These impoundments are likely marginal or unsuitable habitat for the salamander. While the water-quality threat is pervasive and problematic, the overall magnitude of the threat is moderate, reflected by the fact that there has not been a steep rate of decline in the population of this species. Water quality degradation in the Black Warrior basin is ongoing; therefore, the threats are imminent. We assigned an LPN of 8 to this species.

Fishes

Headwater chub (*Gila nigra*) – The following summary is based on

information contained in our files and the 12–month finding published in the **Federal Register** on May 3, 2006 (71 FR 26007). The headwater chub is a moderate-sized cyprinid fish. The range of the headwater chub has been reduced by approximately 60 percent. Sixteen streams (125 miles (200 kilometers) of stream) are thought to be occupied out of 19 streams (312 miles (500 kilometers) of stream) formerly occupied in the Gila River Basin in Arizona and New Mexico. All remaining populations are fragmented and isolated and threatened by a combination of factors.

Headwater chub are threatened by introductions of nonnative fish that prey on them and compete with them for food. These nonnative fish are difficult to eliminate and, therefore, pose an ongoing threat. Habitat destruction and modification have occurred and continue to occur as a result of dewatering, impoundment, channelization, and channel changes caused by alteration of riparian vegetation and watershed degradation from mining, grazing, roads, water pollution, urban and suburban development, groundwater pumping, and other human actions. Existing regulatory mechanisms do not appear to be adequate for addressing the impact of nonnative fish and also have not removed or eliminated the threats that continue to be posed through habitat destruction or modification. The fragmented nature and rarity of existing populations makes them vulnerable to other natural or manmade factors, such as drought and wildfire. Climate change is predicted to worsen these threats though increased aridity of the regions, thus reducing stream flows and warming aquatic habitats, which makes them more suitable to nonnative species.

The Arizona Game and Fish Department has finalized the Arizona Statewide Conservation Agreement for Roundtail Chub (*G. robusta*), Headwater Chub, Flannelmouth Sucker (*Catostomus latipinnis*), Little Colorado River Sucker (*Catostomus* spp.), Bluehead Sucker (*C. discobolus*), and Zuni Bluehead Sucker (*C. discobolus yarrowi*). The New Mexico Department of Game and Fish recently listed the headwater chub as endangered and created a recovery plan for the species: Colorado River Basin Chubs (Roundtail Chub, Gila Chub (*G. intermedia*), and Headwater Chub) Recovery Plan, which was approved by the New Mexico State Game Commission on November 16, 2006. Both the Arizona Agreement and the New Mexico Recovery Plan recommend preservation and enhancement of extant populations and restoration of historical headwater-chub populations. The recovery and conservation actions prescribed by Arizona and New Mexico plans, which we believe will reduce and remove threats to this species, will require further discussions and authorizations before they can be implemented, although some actions have been completed and several are planned for the immediate future. Although threats are ongoing, new information indicates long-term persistence and stability of existing populations. Currently 10 of the 16 extant populations are considered stable based on abundance and evidence of recruitment. Based on our assessment, threats (nonnative species, habitat loss from land uses) remain imminent and are of a moderate magnitude. Thus, we retained an LPN of 8 for this species.

Arkansas darter (*Etheostoma cragini*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Arkansas darter is a small fish in the perch family native to portions of the Arkansas River basin. The species' range includes sites in extreme northwestern Arkansas, southwestern Missouri, and northeastern Oklahoma, within the Neosho River watershed. It also occurs in a number of watersheds and isolated streams in eastern Colorado, south-central and southwestern Kansas, and the Cimarron watershed in northwest Oklahoma. The species is most often found in small spring-fed streams with sand substrate and aquatic vegetation. It appears stable at most sites where spring flows persist. It has declined in areas where spring flows have decreased or been eliminated. We estimate that currently there are approximately 148 locality occurrences of the Arkansas darter distributed across the 5 States and that a minimum of 12 populations or population groups (metapopulations) now exist. Threats to the species include stream dewatering resulting from groundwater pumping in the western portion of the species' range, and potential development pressures in portions of its eastern range. Spills and runoff from confined animal feeding operations also potentially affect the species rangewide. The magnitude of threats facing this species is moderate to low, given the number of different locations where the species occurs and the fact that no single threat or combination of threats affects more than a portion of the widespread population occurrences. Overall, the threats are nonimminent since groundwater pumping is declining and development, spills, and runoff are not currently affecting the species rangewide. Thus, we are retaining an LPN of 11 for the Arkansas darter.

Cumberland darter (*Etheostoma susanae*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Pearl darter (*Percina aurora*) – See above in ''*Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files.

Rush darter (*Etheostoma phytophilum*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Yellowcheek darter (*Etheostoma moorei*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Chucky madtom (*Noturus crypticus*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Grotto sculpin (*Cottus* sp., sp. nov.) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Grotto sculpin, a small fish, is restricted to two karst areas (limestone regions characterized by sink holes, abrupt ridges, caves, and underground streams): the Central Perryville Karst and Mystery-Rimstone Karst in Perry County, southeast Missouri. Grotto sculpins have been documented in only 5 caves (Burr *et al.* 2001, p. 284). The current overall range of the grotto sculpin has been estimated to encompass approximately 260 square kilometers (100 square miles).

The small population size and endemism of the grotto sculpin make it vulnerable to extinction due to genetic drift, inbreeding depression, and random or chance changes to the

environment. The species' karst habitat is located down-gradient of the city of Perryville, Missouri, which poses a potential threat if contaminants from this urban area enter cave streams occupied by grotto sculpins. Various agricultural chemicals, such as ammonia, nitrite/nitrate, chloride, and potassium have been detected at levels high enough to be detrimental to aquatic life within the Perryville Karst area. More than half of the sinkholes in Perry County contain anthropogenic refuse, ranging from household cleansers and sewage to used pesticide and herbicide containers. As a result, potential water contamination from various sources of point and non-point pollution poses a significant threat to the grotto sculpin. Of the 5 cave systems documented to have grotto sculpins, populations in one cave system were likely eliminated, presumably as the result of point-source pollution. When the cave was searched in the spring of 2000, a mass mortality of grotto sculpin was noted, and subsequent visits to the cave have failed to document a single live grotto sculpin. Thus, the species appears to have suffered a 20 percent decrease in the number of populations from the single event. Predatory fish such as common carp, fat-head minnow, yellow bullhead, green sunfish, bluegill, and channel catfish occur in all of the caves occupied by grotto sculpin. These potential predators may escape surface farm ponds that unexpectedly drain through sinkholes into the underground cave systems and enter grotto sculpin habitat. No regulatory mechanisms are in place that would provide protection to the grotto sculpin. Current threats to the habitat of the grotto sculpin may exacerbate potential problems associated with its low population numbers and increase the likelihood of extinction. Thus, the magnitude of threats is high. The threats are ongoing and, therefore, are imminent. Thus, we assigned this species an LPN of 2.

Sharpnose shiner (*Notropis oxyrhynchus*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The sharpnose shiner is a small, slender minnow, endemic to the Brazos River Basin in Texas. Historically, the sharpnose shiner existed throughout the Brazos River and several of its major tributaries within the watershed. It has also been found in the Wichita River (within the Red River Basin), where it may have once naturally occurred but has since been extirpated. Current information indicates that the population within the upstream of Possum Kingdom Reservoir is apparently stable, while the population downstream of the reservoir may only exist in remnant populations in areas of suitable habitat, or may be completely extirpated, representing a reduction of approximately 69 percent of its historical range.

The most significant threat to the existence of the sharpnose shiner is potential reservoir development within its current range. The current water plan for Texas provides several reservoir options that could be implemented within the Brazos River drainage. Additional threats include irrigation and water diversion, sedimentation, desalination, industrial and municipal discharges, agricultural activities, in-stream sand and gravel mining and the spread of invasive saltcedar. The current limited distribution of the sharpnose shiner within the Upper Brazos River Basin makes it vulnerable to catastrophic events such as the introduction of competitive species or prolonged drought. State law does not provide protection for the sharpnose shiner. The magnitude of threat is high since the major threat of reservoir development within the species' current range may render its remaining habitat unsuitable. The threats are nonimminent because the most significant threat - major reservoir projects - are not likely to occur in the near future, and there is potential for implementing other water supply options that could preclude reservoir development. For these reasons, we assigned an LPN of 5 to this species.

Smalleye shiner (*Notropis buccula*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The smalleye shiner is a small, pallid minnow endemic to the Brazos River Basin in Texas. The population of smalleye shiners within the Upper Brazos River drainage (upstream of Possum Kingdom Reservoir) is apparently stable. However, the shiner may be extirpated downstream from the reservoir, representing a reduction of approximately 54 percent of its historical range.

The most significant threat to the existence of the smalleye shiner is potential reservoir development within its current range. Additional threats include irrigation and water diversion, sedimentation, desalination, industrial and municipal discharges, agricultural activities, in-stream sand and gravel mining and the spread of invasive saltcedar. The current limited distribution of the smalleye shiner within the Upper Brazos River Basin makes it vulnerable to catastrophic events such as the introduction of competitive species or prolonged drought. State law does not provide protection for the smalleye shiner. The magnitude of threat is high since the major threat of reservoir development within the species' current range may render its remaining habitat unsuitable. The threats are nonimminent because major reservoir projects are not likely to occur in the near future and there is potential for implementing other water supply options that could preclude reservoir development. For these reasons, we assigned a LPN of 5 to this species.

Zuni bluehead sucker (*Catostomus discobolus yarrowi*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Zuni bluehead sucker is a colorful fish less than 8 inches long. The range of the Zuni bluehead sucker has been reduced by over 90 percent. The Zuni bluehead sucker currently occupies 9 river miles (15 kilometers) in 3 headwater stream of the Rio Nutria in New Mexico, and potentially occurs in 27 miles in (43 kilometers) the Kinlichee drainage of Arizona. However, the number of occupied miles in Arizona is unknown and the genetic composition of these fish is still under investigation.

Zuni bluehead sucker range reduction and fragmentation is caused by discontinuous surface water flow, introduced species, and habitat degradation from fine sediment deposition. Zuni bluehead sucker persist in very small creeks that are subject to very low flows and drying during periods of drought. Because of climate change (warmer air temperatures), stream flow is predicted to decrease in the Southwest, even if precipitation were to increase moderately. Warmer winter and spring temperatures cause an increased fraction of precipitation to fall as rain, resulting in a reduced snow pack, an earlier snow melt, and a longer dry season leading to decreased stream flow in the summer and a longer fire season. These changes would have a negative effect on Zuni bluehead sucker. Another major impact to populations of Zuni bluehead sucker was the application of fish toxicants through at least two dozen treatments in the Nutria and Pescado rivers between 1960 and 1975. Large numbers of Zuni bluehead suckers were killed during these treatments. The Zuni bluehead sucker is most likely extirpated from Rio Pescado as none

have been collected from that river since 1993.

The New Mexico Department of Game and Fish developed a recovery plan for Zuni bluehead sucker which was approved by the New Mexico State Game Commission on December 15, 2004. The recovery plan recommends preservation and enhancement of extant populations and restoration of historical Zuni bluehead sucker populations. We believe the recovery actions prescribed by the recovery plan will reduce and remove threats to this subspecies, but they will require further discussions and authorizations before they can be implemented and threats are reduced. Because of the ongoing threats of high magnitude, including loss of habitat (historical and current from beaver activity), degradation of remaining habitat (nonnative species and land development), drought, fire, and climate change, we maintained an LPN of 3 for this subspecies.

Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*) – The following summary is based on information contained in our files and our status review published on May 14, 2008 (73 FR 27900). Rio Grande cutthroat trout is one of 14 subspecies of cutthroat trout found in the western United States. Populations of this subspecies are in New Mexico and Colorado in drainages of the Rio Grande, Pecos, and Canadian rivers. Although once widely distributed in connected stream networks, Rio Grande cutthroat trout populations now occupy about 10 percent of its historical habitat and the populations are fragmented and isolated from one another. The majority of populations occur in high elevation streams.

Major threats include: Loss of suitable habitat that has occurred and is likely to continue occurring due to water diversions, dams, stream drying, habitat quality degradation, and changes in hydrology; introduction of nonnative trout and ensuing competition, predation, and hybridization; and whirling disease. In additiona, average air temperatures in the Southwest have increased about 1°C (2.5°F) in the past 30 years and they are projected to increase by another 1.2 to 2.8°C (3 to 7°F) by 2050. Because trout require coldwater and water temperatures depend in large part on air temperature, there is concern that the habitat of Rio Grande cutthroat trout will further decrease in response to warmer water temperatures caused by climate change. Wildfire and drought (stream drying) are additional threats to Rio Grande cutthroat trout populations that are likely to increase in magnitude in response to climate change. Research is occurring to assess the effects of climate change on this subspecies and agencies are working to restore historically occupied streams. The threats are of moderate magnitude because there is good distribution and a comparatively large number of populations across the landscape; some populations have few threats present, and in other areas, management actions are taken to help control the threat of nonnative trout. Overall, the threats are ongoing and, therefore, imminent. Based on imminent threats of moderate magnitude, we assigned an LPN of 9 to this subspecies.

Clams

Texas hornshell (*Popenaias popei*) – The following summary is based on information contained in our files and information provided by the New Mexico Department of Game and Fish and Texas Parks and Wildlife Department. No new information was provided in the petition received on May 11, 2004. The Texas hornshell is a freshwater mussel found in the Black River in New Mexico, and the Rio Grande and the Devils River in Texas. Until March 2008, the only known extant populations were in New Mexico's Black River and one locality in the Rio Grande near Laredo, Texas. In March 2008, two new localities were confirmed in Texas – one in the Devils River and one in the mainstem Rio Grande in the Rio Grande Wild and Scenic River segment downstream of Big Bend National Park.

The primary threats to this species are habitat alterations such as stream bank channelization, impoundments, and diversions for agriculture and flood control; contamination of water by oil and gas activity; alterations in the natural riverine hydrology; and increased sedimentation from prolonged overgrazing and loss of native vegetation. Although riverine habitats throughout the species' known occupied range are under constant threat from these ongoing or potential activities, numerous conservation actions that will benefit the species are underway in New Mexico, including the completion of a state recovery plan for the species and the drafting of a Candidate Conservation Agreement with Assurances, and are beginning in Texas on the Big Bend reach of the Rio Grande. In addition, previously unknown locations where the species persists were found in Texas in 2008. Due to these ongoing conservation efforts and the discovery of new locations, the magnitude of the threats is moderate. However, the threats to the species are ongoing, and remain imminent. Thus, we maintained a LPN of 8 for this species.

Fluted kidneyshell (*Ptychobranchus subtentum*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The fluted kidneyshell is a freshwater mussel endemic to the Cumberland and Tennessee River systems in Alabama, Kentucky, Tennessee, and Virginia. It requires shoal habitats in free-flowing rivers to survive and successfully recruit new individuals into its populations.

This species has been extirpated from numerous regional streams and is no longer found in the State of Alabama. Habitat destruction and alteration (e.g., impoundments, sedimentation, and pollutants) are the chief factors that contributed to its decline. The fluted kidneyshell was historically known from at least 37 streams but is currently restricted to no more than 12 isolated populations. Current status information for most of the 12 populations deemed to be extant is available from recent periodic sampling efforts (sometimes annually) and other field studies, particularly in the upper Tennessee River system. Some populations in the Cumberland River system have had recent surveys as well (e.g., Wolf, Little Rivers; Little South Fork; Horse Lick, Buck Creeks). Populations in Buck Creek, Little South Fork, Horse Lick Creek, Powell River, and North Fork Holston River have clearly declined over the past two decades. Based on recent information, the overall population of the fluted kidneyshell is declining rangewide. At this time, the species remains in large numbers in just the Clinch River/Copper Creek, although smaller, viable populations remain (e.g., Wolf, Little, North Fork Holston Rivers; Rock Creek). Most other populations are of questionable or limited viability, with some on the verge of extirpation (e.g., Powell River; Little South Fork; Horse Lick, Buck, Indian Creeks). Newly reintroduced populations in the Little Tennessee, Nolichucky, and Duck Rivers may begin to reverse the downward population trend of this species. The threats are high in magnitude, since the majority of populations of this species are severely affected by numerous threats (impoundments, sedimentation, small population size, isolation of populations, gravel mining, municipal pollutants, agricultural runoff, nutrient enrichment, and coal processing pollution) that result in mortality or reduced reproductive output. Since the threats are ongoing, they are imminent.

We assigned an LPN of 2 to this mussel species.

Neosho mucket (*Lampsilis rafinesqueana*) – See above in ''*Listing Priority Changes in Candidates.*'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Alabama pearlshell (*Margaritifera marrianae*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Slabside pearlymussel (*Lexingtonia dolabelloides*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The slabside pearlymussel is a freshwater mussel endemic to the Cumberland and Tennessee River systems in Alabama, Kentucky, Tennessee, and Virginia. It requires shoal habitats in free-flowing rivers to survive and successfully recruit new individuals into its populations.

Habitat destruction and alteration (e.g., impoundments, sedimentation, and pollutants) are the chief factors contributing to the decline of this species, which has been extirpated from numerous regional streams and is no longer found in Kentucky. The slabside pearlymussel was historically known from at least 32 streams, but is currently restricted to no more than 10 isolated stream segments. Current status information for most of the 10 populations deemed to be extant is available from recent periodic sampling efforts (sometimes annually) and other field studies. Comprehensive surveys have taken place in the Middle and North Forks Holston River, Paint Rock River, and Duck River in the past several years. Based on recent information, the overall population of the slabside pearlymussel is declining rangewide. Of the five streams in which the species remains in good numbers (e.g., Clinch, North and Middle Forks Holston, Paint Rock, Duck Rivers), the Middle and upper North Fork Holston Rivers have undergone drastic recent declines, while the Clinch population has been in a longer-term decline. Most of the remaining five populations (e.g., Powell River, Big Moccasin Creek, Hiwassee River, Elk River, Bear Creek) have doubtful viability, and several if not all of them may be on the verge of extirpation.

The threats remain high in magnitude, since all populations of this species are severely affected by numerous threats (impoundments, sedimentation, small population size, isolation of populations, gravel mining, municipal pollutants, agricultural runoff, nutrient enrichment, and coal processing pollution) that result in mortality or reduced reproductive output. Since the threats are ongoing, they are imminent. We assigned an LPN of 2 to this mussel species.

Altamaha spinymussel (*Elliptio spinosa*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Snails

Sisi snail (*Ostodes strigatus*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The sisi snail is a ground-dwelling species in the Potaridae family, and is endemic to American Samoa. The species is now known from a single population on the island of Tutuila, American Samoa.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails. The decline of the sisi in American Samoa has resulted, in part, from loss of habitat to forestry and agriculture and loss of forest structure to hurricanes and alien weeds that establish after these storms. All live sisi snails have been found in the leaf litter beneath remaining intact forest canopy. No snails were found in areas bordering agricultural plots or in forest areas that were severely damaged by three hurricanes (1987, 1990, and 1991). Under natural historical conditions, loss of forest canopy to storms did not pose a great threat to the long-term survival of these snails; enough intact forest with healthy populations of snails would support dispersal back into newly regrown canopy forest. However, the presence of alien weeds such as mile-a-minute vine (*Mikania micrantha*) may reduce the likelihood that native forest will re-establish in areas damaged by the hurricanes. This loss of habitat to storms is greatly exacerbated by expanding agriculture. Agricultural plots on Tutuila have spread from low elevation up to middle and some high elevations, greatly reducing the forest area and thus reducing the resilience of native forests and its populations of native snails. These reductions also increase the likelihood that future storms will lead to the extinction of populations or species that rely on the remaining canopy forest. In an effort to eradicate the giant African snail (*Achatina fulica*), the alien rosy carnivore snail (*Euglandia rosea*) was introduced in 1980. The rosy carnivore snail has spread throughout the main island of Tutuila. Numerous studies show that the rosy carnivore snail feeds on endemic island snails including the sisi, and is a major agent in their declines and extirpations. At present, the major threat to long-term survival of the native snail fauna in American Samoa is predation by nonnative predatory snails. These threats are ongoing and are therefore imminent. Since the threats occur throughout the entire range of the species and have a significant effect on the survival of the snails, they are of a high magnitude. Therefore we assigned this species an LPN of 2.

Diamond Y Spring snail (*Pseudotryonia adamantina*) and Gonzales springsnail (*Tryonia circumstriata*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Diamond Y Spring snail and Gonzales springsnail are small aquatic snails endemic to Diamond Y Spring in Pecos County, Texas. The spring, its outflow channels, and the land surrounding them are owned and managed by The Nature Conservancy.

These snails are primarily threatened with habitat loss due to springflow declines from drought, pumping of groundwater, and potentially climate change. Additional threats include water contamination from accidental releases of petroleum products, as their habitat is in an active oil and gas field. Also, a nonnative aquatic snail (*Melanoides* sp.) was recently introduced into the native snails' habitat and may compete with endemic snails for space and resources. The magnitude of threats is high because limited distribution of these narrow endemics makes any impact from increasing threats (e.g., loss of springflow, contaminants, and nonnative species) likely to result in the extinction of the species. These species occur in one location in an arid region currently plagued by drought and ongoing aquifer withdrawals, making the eventual loss of spring flow an imminent threat of total habitat loss. Thus, we maintain the LPN of 2 for both species.

Fragile tree snail (*Samoana fragilis*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

A tree-dwelling species, the fragile tree snail is a member of the Partulidae family of snails, and is endemic to the islands of Guam and Rota (Mariana Islands). Requiring cool and shaded native forest habitat, the species is now known from one population on Guam and from one population on Rota.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails and flatworms. Large numbers of Philippine deer (*Cervus mariannus*) (Guam and Rota), pigs (*Sus scrofra*) (Guam), water buffalo (*Bubalus bubalis*) (Guam), and cattle (*Bos taurus*) (Rota) directly alter the understory plant community and overall forest microclimate, making it unsuitable for snails. Predation by the alien rosy carnivore snail (*Euglandina rosea*) and the Manokwar flatworm (*Platydemus manokwari*) is a serious threat to the survival of the fragile tree snail. Field observations have established that the rosy carnivore snail and the Manokwar flatworm will readily feed on native Pacific island tree snails, including the Partulidae, such as those of the Mariana Islands. The rosy carnivore snail has caused the extirpation of many populations and species of native snails throughout the Pacific islands. The Manokwar flatworm has also contributed to the decline of native tree snails, in part due to its ability to ascend into trees and bushes that support native snails. Areas with populations of the flatworm usually lack partulid tree snails or have declining numbers of snails. Because all of the threats occur rangewide and have a significant effect on the survival of this snail species, they are high in magnitude. The threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Guam tree snail (*Partula radiolata*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the Guam tree snail is a member of the Partulidae family of snails and is endemic to the island of Guam. Requiring cool and shaded native forest habitat, the species is now known from 22 populations on Guam.

This species is primarily threatened by predation from nonnative predatory snails and flatworms. In addition, the species is also threatened by habitat loss and degradation. Predation by the alien rosy carnivore snail (*Euglandina rosea*) and the alien Manokwar flatworm (*Platydemus manokwari*) is a serious threat to the survival of the Guam tree snail (see summary for the fragile tree snail, above). On Guam, open agricultural fields and other areas prone to erosion were seeded with tangantangan (*Leucaena leucocephala*) by the U.S. Military. Tangantangan grows as a single species stand with no substantial understory. The microclimatic condition is dry with little accumulation of leaf litter humus and is particularly unsuitable as Guam tree snail habitat. In addition, native forest cannot reestablish and grow where this alien weed has become established. Because all of the threats occur rangewide and have a significant effect on the survival of this snail species, they are high in magnitude. The threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Humped tree snail (*Partula gibba*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the humped tree snail is a member of the Partulidae family of snails, and was originally known from the island of Guam and the Commonwealth of the Northern Mariana Islands (islands of Rota, Aguiguan, Tinian, Saipan, Anatahan, Sarigan, Alamagan, and Pagan). Most recent surveys revealed a total of 13 populations on the islands of Guam, Rota, Aguiguan, Sarigan, Saipan, Alamagan, and Pagan. Although still the most widely distributed tree snail endemic in the Mariana Islands, remaining population sizes are often small.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails and flat worms. Throughout the Mariana Islands, feral ungulates (pigs (*Sus scrofa*), Philippine deer (*Cervus mariannus*), cattle *(Bos taurus*), water buffalo (*Bubalus bubalis*), and goats (*Capra hircus*)) have caused severe damage to native forest vegetation by browsing directly on plants, causing erosion, and retarding forest growth and regeneration. This in turn reduces the quantity and quality of forested habitat for the humped tree snail. Currently, populations of feral ungulates are found on the islands of Guam (deer, pigs, and water buffalo), Rota (deer and cattle), Aguiguan (goats), Saipan (deer, pigs, and cattle), Alamagan (goats, pigs, and cattle), and Pagan (cattle, goats, and pigs). Goats were eradicated from Sarigan in 1998 and the humped tree snail has increased in abundance on that island, likely in response to the removal of all the goats. However, the population of humped tree snails on Anatahan is likely extirpated due to the massive volcanic explosions of the island beginning in 2003 and still continuing, and the resulting loss of up to 95 percent of the vegetation on the island. Predation by the alien rosy carnivore snail (*Euglandina rosea*) and the alien Manokwar flatworm (*Platydemus manokwari*) is a serious threat to the survival of the humped tree snail (see summary for the fragile tree snail, above). The magnitude of threats is high because these alien predators cause significant population declines to the humped tree snail rangewide. These threats are ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Lanai tree snail (*Partulina semicarinata*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Lanai tree snail (*Partulina variabilis*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Langford's tree snail (*Partula langfordi*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, Langford's tree snail is a member of the Partulidae family of snails, and is known from one population on the island of Aguiguan. This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails. In the 1930s, the island of Aguiguan was mostly cleared of native forest to support sugar cane and pineapple production. The abandoned fields and airstrip are now overgrown with alien weeds. The remaining native forest understory has greatly suffered from large and uncontrolled populations of alien goats and the invasion of weeds. Goats (*Capra hircus*) have caused severe damage to native forest vegetation by browsing directly on plants, causing erosion, and retarding forest growth and regeneration. This in turn reduces the quantity and quality of forested habitat for Langford's tree snail. Predation by the alien rosy carnivore snail (*Euglandina rosea*) and by the Manokwar flatworm (*Platydemus manokwari*) (see summary for the fragile tree snail, above) is also a serious threat to the survival of Langford's tree snail.

All of the threats are occurring rangewide and no efforts to control or eradicate the nonnative predatory snail species or to reduce habitat loss are being undertaken. The magnitude of threats is high because they result in direct mortality or significant population declines to Langford's tree snail rangewide. A survey of Aguiguan in November 2006 failed to find any live Langford's tree snails. These threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Phantom Cave snail (*Cochliopa texana*) and Phantom springsnail (*Tryonia cheatumi*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Phantom Cave snail and Phantom springsnail are small aquatic snails that occur in three spring outflows in the Toyah Basin in Reeves and Jeff Davis Counties, Texas.

The primary threat to both species is the loss of surface flows due to declining groundwater levels from drought, pumping for agricultural production, and potentially climate change. Much of the land immediately surrounding their spring habitat is owned and managed by The Nature Conservancy, Bureau of Reclamation, and Texas Parks and Wildlife Department. However, the water needed to maintain their habitat has declined due to a reduction in spring flows, possibly as a result of private groundwater pumping in areas beyond that controlled by these landowners. As an example, Phantom Lake Spring, one of the sites of occurrence, has already ceased flowing and aquatic habitat is artificially supported only by a pumping system. The magnitude of the threats is high because spring flow loss would result in complete habitat destruction and permanent elimination of all populations of the species. The immediacy of the threats is imminent, as evidenced by the drastic decline in spring flow at Phantom Lake Spring that is currently happening and may extirpate these populations in the near future. Declining spring flows in San Solomon Spring are also becoming evident and will affect that spring site as well within the foreseeable future. Thus, we maintained the LPN of 2 for both species.

Newcomb's tree snail (*Newcombia cumingi*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Tutuila tree snail (*Eua zebrina*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the Tutuila tree snail is a member of the Partulidae family of snails, and is endemic to American Samoa. The species is known from 32 populations on the islands of Tutuila, Nuusetoga, and Ofu.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails and rats. All live Tutuila tree snails were found on understory vegetation beneath remaining intact forest canopy. No snails were found in areas bordering agricultural plots or in forest areas that were severely damaged by three hurricanes (1987, 1990, and 1991). (See summary for the sisi snail, above, regarding impacts of alien weeds and of the rosy carnivore snail.) Rats (*Rattus* spp) have also been shown to devastate snail populations, and rat-chewed snail shells have been found at sites where the Tutuila snail occurs. At present, the major threat to the long-term survival of the native snail fauna in American Samoa is predation by nonnative predatory snails and rats. The magnitude of threats is high because they result in direct mortality or significant population declines to the Tutuila tree snail rangewide. The threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Chupadera springsnail (*Pyrgulopsis chupaderae*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Elongate mud meadows springsnail (*Pyrgulopsis notidicola*) – The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Pyrgulopsis notidicola* is endemic to Soldier Meadow, which is located at the northern extreme of the western arm of the Black Rock Desert in the transition zone between the Basin and Range Physiographic Province and the Columbia Plateau Province, Humboldt County, Nevada. The type locality, and the only known location of the species, occurs in a stretch of thermal (between 45° and 32° Celsius, 113° and 90° Fahrenheit) aquatic habitat that is approximately 600 m (1,968 ft) long and 2 m (6.7 ft) wide. *Pyrgulopsis notidicola* occurs only in shallow, flowing water on gravel substrate. The species does not occur in deep water (i.e., impoundments) where water velocity is low, gravel substrate is absent, and sediment levels are high.

The species and its habitat are threatened by recreational use in the areas where it occurs as well as the ongoing impacts of past water diversions and livestock grazing and current off-highway vehicle travel. Conservation measures implemented recently by the Bureau of Land Management include the installation of fencing to exclude livestock, wild horses, burros and other large mammals; closing of access roads to spring, riparian, and wetland areas and the limiting of vehicles to designated routes; the establishment of a designated campground away from the habitats of sensitive species; the installation of educational signage; and increased staff presence, including law enforcement and a volunteer site steward during the 6–month period of peak visitor use. These conservation measures have reduced the magnitude of threat to the species to moderate to low; all remaining threats are nonimminent and involve long-term changes to the habitat for the species resulting from past impacts. Until a monitoring program is in place that allows us to assess the long-term trend of the species, we have assigned this species an LPN of 11.

Gila springsnail (*Pyrgulopsis gilae*) – The following summary is based on information contained in our files and the petition we received on November 20, 1985. Also see our 12–month petition finding published in the **Federal Register** on October 4, 1988 (53 FR 38969). The Gila springsnail is an aquatic species known from 13 populations in New Mexico. Surveys conducted in 2008 located three additional populations bringing the total known to 16.

The long-term persistence of the Gila springsnail is contingent upon protection of the riparian corridor and maintenance of flow to ensure continuous, oxygenated flowing water within the species' required thermal range. Occupied Gila springsnail localities on Federal lands surveyed in 2008 are subject to light levels of recreational use only at the thermal springs, and overall, recreational activities do not appear to be affecting springsnail populations. The level of recreational impacts at thermal springs on private lands is unknown. Sites visited in 2008 were excluded from grazing. Although elk use at some of the springs was evident, the level of impact

was low. Of greatest concern are the very small size of the isolated occupied habitats and the potential effects of climate change. Although the effect climate change will have on the springs of the Southwest is unpredictable, mean annual temperature in New Mexico has increased by 0.6 degrees per decade since 1970. Higher temperatures lead to higher evaporation rates, increased evapotranspiration, and decreased soil moisture which may reduce the amount of groundwater recharge. Widespread, long-term drought could affect spring flow quantity and quality, negatively affecting the springsnail populations. Based on these nonimminent threats that are currently of a low magnitude, we retained a listing priority number of 11 for this species.

Gonzales springsnail (*Tryonia circumstriata*) – See summary above under Diamond Y Spring snail (*Pseudotryonia adamantina*).

Huachuca springsnail (*Pyrgulopsis thompsoni*) – The following is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Huachuca springsnail inhabits approximately 16 springs and cienegas at elevations of 4,500 to 7,200 feet in southeastern Arizona (14 sites) and adjacent portions of Sonora, Mexico (2 sites). The springsnail is typically found in the shallower areas of springs or cienegas, often in rocky seeps at the spring source. Ongoing threats include habitat modification and destruction through catastrophic wildfire; drought; streamflow alteration; and, potentially, grazing, recreation, military activities, and timber harvest. Overall, the threats are moderate in magnitude because threats are not occurring throughout the range of the species uniformly and not all populations would likely be affected simultaneously by any of the known threats. In addition, multiple landowners (Forest Service, Fort Huachuca, The Nature Conservancy) are including consideration for the springsnail or other co-occurring listed species in their activities (e.g., reducing fuel loads, avoiding occupied sites during military operations). The threats are ongoing and, thus, imminent. Therefore, we have assigned an LPN of 8 to this species.

New Mexico springsnail (*Pyrgulopsis thermalis*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Page springsnail (*Pyrgulopsis morrisoni*) – The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Page springsnail is known to exist only within a complex of springs located within an approximately 0.93-mi (1.5-km) stretch along the west side of Oak Creek around the community of Page Springs, and within springs located along Spring Creek, tributary to Oak Creek, Yavapai County, Arizona. The primary threat to the Page springsnail is modification of habitat by domestic, agricultural, ranching, fish hatchery, and recreational activities. Many of the springs where the species occurs have been subjected to some level of such modification. Arizona Game and Fish Department management plans for the Bubbling Ponds and Page Springs fish hatcheries include commitments to replace lost habitat and to monitor remaining populations of invertebrates such as the Page springsnail. A draft Candidate Conservation Agreement with Assurances was published and available for public review and comment on January 28, 2008. This Agreement should be finalized during 2009, at which time we will reassess the LPN to ensure the magnitude and immediacy of threats are still appropriately described. Based on recent survey data, it appears that the Page springsnail is abundant within natural habitats and persists in modified habitats, albeit at reduced densities. The magnitude of threats is high because limited distribution of this narrow endemic makes any detrimental effects from threats likely to result in extirpation or extinction. The immediacy of the threat of groundwater withdrawal is uncertain due to conflicting information regarding imminence. However, overall, the threats are imminent because modification of the species' habitat by threats other than groundwater withdrawal is currently occurring. Therefore, we retained an LPN of 2 for the Page springsnail.

Phantom springsnail (*Tyronia cheatumi*) – See summary above under Phantom Cave snail (*Cochliopa texana*).

Three Forks springsnail (*Pyrgulopsis trivialis*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Insects

Wekiu bug (*Nysius wekiuicola*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The wekiu bug belongs to the true bug family, Lygaeidae, and is endemic to the island of Hawaii. This species only occurs on the summit of Mauna Kea and feeds upon other insect species which are blown to the summit of this large volcano. The wekiu bug is primarily threatened by the loss of its habitat from astronomy development. In 2004 and early 2005, surveys found multiple new locations of the wekiu bug on cinder cones on the Mauna Kea summit. Several of these cinder cones within the Mauna Kea Science Reserve, as well as two cinder cones located in the State Ice Age Natural Area Reserve, are not currently undergoing development nor are they the site of any planned development. Thus, the threats, although ongoing, do not occur across the entire range of the wekiu bug. Because there are occupied locations that are not subject to the primary threat of astronomy development, the overall magnitude of the threat is moderate. The immediacy of the threats is imminent because there are still significant parts of the wekiu bug's range where development is occurring. Therefore, we assigned this species an LPN of 8.

Mariana eight spot butterfly (*Hypolimnas octucula mariannensis*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Mariana eight spot butterfly is a nymphalid butterfly species that feeds upon two host plants, *Procris pedunculata* and *Elatostema calcareum*. Endemic to the islands of Guam and Saipan, the species is now known from ten populations on Guam. This species is currently threatened by predation and parasitism. The Mariana eight spot butterfly has extremely high mortality of eggs and larvae due to predation by alien ants and wasps. Because the threat of parasitism and predation by nonnative insects occurs rangewide and can cause significant population declines to this species, they are high in magnitude. The threats are imminent because they are ongoing. Therefore, we assigned an LPN of 3 for this subspecies.

Mariana wandering butterfly (*Vagrans egestina*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Mariana wandering butterfly is a nymphalid butterfly species which

feeds upon a single host plant species, *Maytenus thompsonii*. Originally known from and endemic to the islands of Guam and Rota, the species is now known from one population on Rota. This species is currently threatened by alien predation and parasitism. The Mariana wandering butterfly is likely predated on by alien ants and parasitized by native and nonnative parasitoids. Because the threat of parasitism and predation by nonnative insects occurs rangewide and can cause significant population declines to this species, they are high in magnitude. These threats are imminent because they are ongoing. Therefore, we assigned an LPN of 2 for this species.

Miami blue butterfly (*Cyclargus thomasi bethunebakeri*) – See above in ''*Priority Changes in Candidates*.'' The above summary is based on information contained in our files and in the petition we received on June 15, 2000.

Sequatchie caddisfly (*Glyphopsyche sequatchie*) – The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Sequatchie caddisfly is known from two spring runs that emerge from caves in Marion County, Tennessee - Owen Spring Branch (the type locality) and Martin Spring run in the Battle Creek system. In 1998, biologists estimated population sizes at 500 to 5000 individuals for Owen Spring Branch and 2 to 10 times higher at Martin Spring, due to the greater amount of apparently suitable habitat. In spite of greater amounts of suitable habitat at the Martin Spring run, Sequatchie caddisflies are more difficult to find at this site, and in 2001 (the most recent survey) the Sequatchie caddisfly was ''abundant'' at the Owen Spring Branch location, while only two individuals were observed at the Martin Spring. Threats to the Sequatchie caddisfly include siltation, point and nonpoint discharges from municipal and industrial activities and introduction of toxicants during episodic events. These threats, coupled with the extremely limited distribution of the species, its apparent small population size, the limited amount of occupied habitat, ease of accessibility, and the annual life cycle of the species, are all factors that leave the Sequatchie caddisfly vulnerable to extirpation. Therefore, the magnitude of the threat is high. These threats are gradual and not necessarily imminent. Based on high-magnitude, nonimminent threats, we assigned this species a listing priority number of 5.

Clifton cave beetle (*Pseudanophthalmus caecus*) – The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. Clifton cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon small cave invertebrates. It is cave dependent, and is not found outside the cave environment. Clifton cave beetle is only known from two privately owned Kentucky caves. Soon after the species was first collected in 1963 in one cave, the cave entrance was enclosed due to road construction. We do not know whether the species still occurs at the original location or if it has been extirpated from the site by the closure of the cave entrance. Other caves in the vicinity of this cave were surveyed for the species during 1995 to1996 and only one additional site was found to support the Clifton Cave beetle. The limestone caves in which the Clifton cave beetle is found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. Events such as toxic chemical spills, discharges of large amounts of polluted water or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. Therefore, the magnitude of threat is high for this species. The threats are nonimminent because there are no known projects planned that would affect the species in the near future. We therefore have assigned a listing priority number of 5 to this species.

Icebox cave beetle (*Pseudanophthalmus frigidus*) – The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. Icebox cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon small cave invertebrates. It is not found outside the cave environment, and is only known from one privately owned Kentucky cave. The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species has not been observed since it was originally collected, but species experts believe that it may still exist in the cave in low numbers. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. Events such as toxic chemical spills or discharges of large amounts of polluted water, or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances, could have serious adverse impacts on this species. Therefore, the magnitude of threat is high for this species because it is limited in distribution and the threats would result in mortality or reduced reproductive capacity. The threats are nonimminent because there are no known projects planned that would affect the species in the near future. We therefore have assigned an LPN of 5 to this species.

Inquirer cave beetle (*Pseudanophthalmus inquisitor*) – The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. The inquirer cave beetle is a fairly small, eyeless, reddish-brown predatory insect that feeds upon small cave invertebrates. It is not found outside the cave environment, and is only known from one privately owned Tennessee cave. The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species was last observed in 2006. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. The area around the only known site for the species is in a rapidly expanding urban area. The entrance to the cave is protected by the landowner through a cooperative management agreement with the Service, The Nature Conservancy, and Tennessee Wildlife Resources Agency; however, a sinkhole that drains into the cave system is located away from the protected entrance and is near a highway. Events such as toxic chemical spills, discharges of large amounts of polluted water or indirect impacts from off-site construction activities could adversely affect the species and the cave habitat. The magnitude of threat is high for this species because it is limited in distribution and the threats would have negative impacts on its continued existence. The threats are nonimminent because there are no known projects planned that would affect the species in the near future and it receives some

protection under a cooperative management agreement. We therefore have assigned a listing priority number of 5 to this species.

Louisville cave beetle (*Pseudanophthalmus troglodytes*) – The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Louisville cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon cave invertebrates. It is not found outside the cave environment, and is only known from two privately owned Kentucky caves. The limestone caves in which this species is found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. Events such as toxic chemical spills, discharges of large amounts of polluted water or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The magnitude of threat is high for this species, because it is limited in distribution and the threats would have negative impacts on the species. The threats are nonimminent because there are no known projects planned that would affect the species in the near future. We therefore have assigned an LPN of 5 to this species.

Tatum Cave beetle (*Pseudanophthalmus parvus*) – The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. Tatum Cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon cave invertebrates. It is not found outside the cave environment, and is only known from one privately owned Kentucky cave. The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species has not been observed since 1965, but species experts believe that it still exists in low numbers. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. Events such as toxic chemical spills or discharges of large amounts of polluted water, or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The magnitude of threat is high for this species, because its limited numbers mean that any threats could affect its continued existence. The threats are nonimminent because there are no known projects planned that would affect the species in the near future. We therefore have assigned an LPN of 5 to this species.

Taylor's (Whulge, Edith's) checkerspot butterfly (*Euphydryas editha taylori*) – The following summary is based on information contained in our files and in the petition received on December 11, 2002. Historically, the Taylor's checkerspot butterfly was known from 70 locations: 23 in British Columbia, 34 in Washington, and 13 in Oregon. Based on the results of surveys during the 2008 flight period, butterflies were detected in just 8 populations. The total number of Taylor's checkerspot butterflies was considerably reduced in current surveys with approximately 2,300 individuals observed rangewide. The latest decline observed was from the Fort Lewis population where fewer than 200 butterflies were counted. Currently, just five populations had butterflies in flight in Washington, two in the Willamette Valley of Oregon, and one on Denman Island, British Columbia, Canada. A new population was observed on the Olympic National Forest.

Threats include degradation and destruction of native grasslands due to agriculture, residential and commercial development, encroachment by nonnative plants, succession from grasslands to native shrubs and trees, and fire. The threat of military training has greatly increased during the past year and the site where Taylor's checkerspot were known to thrive on Fort Lewis was severely affected by Armored Vehicle training. The outcome of the training's effect will not be determined until after this year's monitoring has been completed.

Bacillus thuringiensis var. *kurstake* (Btk) was routinely applied for Asian gypsy moth control in Pierce County, Washington for many years. This pesticide is documented to have deleterious effects on non-target lepidopteron species, including all moths and butterflies. Because of the timing and close proximity of the Btk application to native prairies where Taylors' checkerspot adults, or their larvae, were historically known to occur, it is likely that the spraying contributed to the extirpation of the subspecies at three locations in Pierce County, Washington.

The grassland ecosystem on which this subspecies depends requires annual management to maintain suitable grassland habitat for the species. Important threats include changes to the structure and composition of prairie habitat brought on by the invasion of shrubs and trees (Scot's broom and Douglas-fir) or nonnative pasture grasses that quickly invade prairies when processes like fire, or its surrogate mowing, do not take place. Threats also include the loss of prairies to development or the conversion of native grasslands to agriculture. Vehicle and foot traffic that crushes larvae and larval host plants on roads where host plants have become established are also threats; these areas act as a mortality sink at several of the north Olympic Peninsula sites.

These changes to prairie habitat threaten Taylor's checkerspot by degrading prairie habitat and making it unsuitable for the butterfly. The threats that lead to habitat degradation and loss are ubiquitous, occurring rangewide, and affect the survival of the subspecies. Therefore, the threats are high in magnitude. The threats are imminent because they are ongoing and occur simultaneously at all of the known locations for the subspecies. Based on the high magnitude and the imminent nature of threats, we continue to assign the Taylor's checkerspot butterfly a listing priority number of 3.

Blackline Hawaiian damselfly (*Megalagrion nigrohamatum nigrolineatum*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Crimson Hawaiian damselfly (*Megalagrion leptodemas*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Oceanic Hawaiian damselfly (*Megalagrion oceanicum*) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Orangeblack Hawaiian damselfly *(Megalagrion xanthomelas*) – The

following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The orangeblack Hawaiian damselfly is a stream-dwelling species endemic to the Hawaiian Islands of Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii. The species no longer is found on Kauai, and is now restricted to 16 populations on the islands of Oahu, Maui, Molokai, Lanai, and Hawaii. This species is threatened by predation from alien aquatic species such as fish and predacious insects, and habitat loss through dewatering of streams and invasion by nonnative plants. Nonnative fish and insects prey on the naiads of the damselfly, and loss of water reduces the amount of suitable naiad habitat available. Invasive plants (e. g., California grass (*Brachiaria mutica*)) also contribute to loss of habitat by forming dense, monotypic stands that completely eliminate any open water. Nonnative fish and plants are found in all the streams the orangeblack damselfly occur in, except the Oahu location, where there are no nonnative fish. We assigned this species an LPN of 8 because, although the threats are ongoing and therefore imminent, they affect the survival of the species in varying degrees throughout the range of the species and are of moderate magnitude.

Picture-wing fly (*Drosophila digressa*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004, but new information was provided by one *Drosophila* expert in 2006. This picture-wing fly, a member of the family Drosophilidae, feeds only upon species of *Charpentiera*, and is endemic to the Hawaiian Island of Hawaii. Never abundant in number of individuals observed, *D. digressa* was originally known from 5 population sites and may now be limited to as few as 1 or 2 sites. Due to the small population size of the species and its small known habitat area, *Drosophila* researchers believe this species and its habitat are particularly vulnerable to a myriad of threats. Feral ungulates (pigs, goats, and cattle) degrade and destroy *D. digressa* host plants and habitat by directly trampling plants, facilitating erosion, and spreading nonnative plant seeds. Nonnative plants degrade host plant habitat and compete for light, space, and nutrients. Direct predation of *D. digressa* by nonnative social insects, particularly yellow jacket wasps, is also a serious threat. Additionally, this species faces competition at the larval stage from nonnative tipulid flies, which feed within the same portion of the decomposing host plant area normally occupied by the *D. digressa* larvae during their development with a resulting reduction in available host plant material. Because the threats to the native forest habitat of *D. digressa*, and to individuals of this species, occur throughout its range and are expected to continue or increase unless efforts at control or eradication are undertaken, they are high in magnitude. In addition, because of the limited distribution and small population of the species, any of the threats would significantly impair survival of the species. The threats are also imminent, because they are ongoing. No known conservation measures have been taken to date to specifically address these threats, and we have therefore assigned this species an LPN of 2.

Stephan's riffle beetle (*Heterelmis stephani*) – The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Stephan's riffle beetle is an endemic riffle beetle found in limited spring environments within the Santa Rita Mountains, Pima County, Arizona. The beetle is known from Sylvester Spring in Madera Canyon, within the Coronado National Forest. Threats to that spring are largely from habitat modification – from recreational activities in the springs and potential changes in water quality and quantity due to catastrophic natural events and climate change. The threats are of low to moderate magnitude based on our current knowledge of the permanence of threats and the likelihood that the species will persist in areas that are unaffected by the threats. Although the threats from climate change are expected to occur over many years, the threats from recreational use are ongoing. Therefore, the threats are imminent. Thus, we retained an LPN of 8 for the Stephan's riffle beetle.

Dakota skipper (*Hesperia dacotae*) – The following summary is based on information contained in our files, including information from the petition received on May 12, 2003. The Dakota skipper is a small- to mid-sized butterfly that inhabits high-quality tallgrass and mixed grass prairie in Minnesota, North Dakota, South Dakota, and the provinces of Manitoba and Saskatchewan in Canada. The species is presumed to be extirpated from Iowa and Illinois and from many sites within occupied States.

The Dakota skipper is threatened by degradation of its native prairie habitat by overgrazing, invasive species, gravel mining, and herbicide applications; inbreeding, population isolation, and prescribed fire threatens some populations. Prairie succeeds to shrubland or forest without periodic fire, grazing, or mowing; thus, the species is also threatened at sites where such disturbances are not applied. The Service and other federal agencies, state agencies, the Sisseton-Wahpeton Sioux Tribe, and some private organizations (e.g., The Nature Conservancy) protect and manage some Dakota skipper sites. Proper management is always necessary to ensure its persistence, even at protected sites. The species may be secure at a few sites where public and private landowners manage native prairie in ways that conserve Dakota skipper, but approximately half of the inhabited sites are privately owned with little or no protection. A few private sites are protected from conversion by easements, but these do not prevent adverse effects from overgrazing. Overall, the threats are moderate in magnitude because they are not occurring rangewide and have a moderate effect on the viability of the species. They are, however, ongoing and therefore imminent, particularly on private lands. Thus, we assigned a LPN of 8 to this species.

Mardon skipper (*Polites mardon*) – The following summary is based on information contained in our files and the petition we received on December 24, 2002. The Mardon skipper is a northwestern butterfly with a disjunct range. Currently this species is known from four widely separated regions: south Puget Sound region, southern Washington Cascades, Siskiyou Mountains of southern Oregon, and coastal northwestern California/southern Oregon. The number of documented locations for the species has increased from fewer than 10 in 1997 to more than 130 rangewide in 2009. New site locations have been documented in each year that targeted surveys have been conducted since 1999. In the past 9 years, significant local populations have been located in the Washington Cascades and in Southern Oregon, with a few local sites supporting populations of hundreds of Mardon skippers.

The Mardon skipper spends its entire life cycle in one location, often on the same grassland patch. The dispersal ability of Mardon skipper is restricted. Threats to the Mardon skipper include direct impacts to individuals and local populations by off-road vehicle use, livestock grazing, and pesticide drift. Habitat destruction or modification through conifer encroachment, invasive nonnative plants, roadside maintenance, and grassland/meadow management

activities such as prescribed burning and mowing are also threats. However, these threats have been substantially reduced due to protections provided by State and Federal special status species programs. The magnitude of the threats is moderate because current regulatory mechanisms associated with State and Federal special status species programs afford a relatively high level of protection from additional habitat loss or destruction across most of the species' range. Threats are imminent because all sites within the species' range currently have one or more identified threats that are resulting in direct impacts to individuals within the populations, or a gradual loss or degradation of the species' habitats. Mardon skippers face a variety of threats that may occur at any time at any of the locations. Low numbers of individuals have been found at most of the known locations. Only a few locations are known to harbor greater than 100 individuals, and specific locations could easily be lost by changes in vegetation composition or from the threat of wildfire. The great distances between the known locations for the species would not allow for dispersal of the species between populations; thus, loss of any population could lead to extirpation of the species at any of these locations. However, the discovery of new populations and the wide geographic range for the Mardon skipper provides a buffer against threats that could destroy all existing habitat simultaneously or jeopardize the continued existence of the species. Thus, based on imminent threats of moderate magnitude, we assigned an LPN of 8 to this species.

Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*) – The following summary is based on information contained in our files, including information from the petition we received on April 21, 1994. The Coral Pink Sand Dunes tiger beetle occurs only at the Coral Pink Sand Dunes, approximately 7 miles west of Kanab, Kane County, in south-central Utah. It is restricted to approximately 234 hectares (577 acres) of protected habitat within the dune field, situated at an elevation of about 1,820 meters (6,000 feet). Continuing drought is negatively affecting tiger beetle populations. Drought conditions have suppressed the beetle's reproductive capabilities. The continued survival of the beetle depends on the preservation of its habitat and favorable rainfall amounts. In addition, the beetle's habitat is being adversely affected by ongoing, recreational off-road vehicle use that is limiting expansion of the species. The two agencies that manage the dune field, the Utah Department of Parks and Recreation and the Bureau of Land Management, have restricted recreational off-road vehicle use in some areas, which reduces impacts. However, continued drought may prevent the population from increasing in size. The beetle's population also is vulnerable to over-collecting by professional and hobby tiger beetle collectors. We have retained an LPN of 2 for this species primarily due to the high magnitude and imminence of drought conditions.

Highlands tiger beetle (*Cicindela highlandensis*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Highlands tiger beetle is narrowly distributed and restricted to areas of bare sand within scrub and sandhill on ancient sand dunes of the Lake Wales Ridge in Polk and Highlands Counties, Florida. Adult tiger beetles have been found at 40 sites from near Haines City south to Josephine Creek. In 2004–2005 surveys, a total of 1,574 adults were found at 40 sites, compared with 643 adults at 31 sites in 1996, 928 adults at 31 sites in 1995, and 742 adults at 21 sites in 1993. Of the 40 sites in the 2004–2005 surveys with one or more adults, results ranged from 3 sites with large populations of over 100 adults, to 13 sites with fewer than 10 adults. Results from a limited removal study at four sites suggest that the actual population size at the various survey sites is likely to be as much as two times as high as indicated by the visual index counts.

Lack of fire to create open sand, habitat loss and fragmentation, and small and isolated populations pose serious threats to this species. Over-collection and pesticide use are additional concerns. Because this species is narrowly distributed with specific habitat requirements and small populations, any of the threats could have a significant impact on the survival of the species. Therefore, the magnitude of threats is high. Although the majority of its historical range has been lost, degraded, and fragmented, numerous sites are protected and land managers are implementing prescribed fire at some sites; these actions are expected to restore habitat and help reduce threats and have already helped stabilize and improve the populations. Overall, the threats are nonimminent. Therefore, we assigned the Highlands tiger beetle an LPN of 5.

Arachnids

Warton's cave meshweaver (*Cicurina wartoni*) – The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Warton's Cave meshweaver is an eyeless, cave-dwelling, unpigmented, 0.23-inch-long invertebrate known only from female specimens. This meshweaver is known to occur in only one cave (Pickle Pit) in Travis County, Texas. Primary threats to the species and its habitat are predation and competition from fire ants, surface and subsurface effects from runoff from an adjacent subdivision, unauthorized entry into the area surrounding the cave, modification of vegetation near the cave from human use, and trash dumping that may include toxic materials near the feature. The magnitude of threats is high because the single location for this species makes it highly vulnerable to extinction. The threats are imminent because fire ants are known to occur in the vicinity of the cave, and impacts to the cave from runoff and human activities are an imminent threat. Thus, we retain a LPN of 2 for this species.

Crustaceans

Anchialine pool shrimp (*Metabetaeus lohena*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Metabetaeus lohena* is an anchialine pool-inhabiting species of shrimp belonging to the family Alpheidae. This species is endemic to the Hawaiian Islands and is currently known from populations on the islands of Oahu, Maui, and Hawaii. The primary threats to this species are predation by fish (which do not naturally occur in the pools inhabited by this species) and habitat loss from degradation (primarily from illegal trash dumping). The pools where this species occurs on the islands of Maui and Hawaii are located within State Natural Area Reserves (NAR). Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. However, enforcement of collection and disturbance prohibitions is difficult, and the negative effects from the introduction of fish are extensive and happen quickly. In addition, the pools where this species occurs on the island of Oahu do not receive protection from collection of the species or disturbance of the pools. Therefore, threats to this species could have a significant adverse effect on the survival of the species, and are of a high magnitude. However, the primary

threats of predation from fish and loss of habitat due to degradation are nonimminent overall, because on the islands of Maui and Hawaii no fish were observed in any of the pools where this species occurs and there has been no documented trash dumping in these pools. Only one site on Oahu had a trash dumping instance, and in that case the trash was cleaned up immediately and the species subsequently observed. No additional dumping events are known to have occurred. Therefore, we assigned this species an LPN of 5.

Anchialine pool shrimp (*Palaemonella burnsi*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Palaemonella burnsi* is an anchialine pool-inhabiting species of shrimp belonging to the family Palaemonidae. This species is endemic to the Hawaiian Islands and is currently known from three populations on the island of Maui and one population on the island of Hawaii. The primary threats to this species are predation by fish (which do not naturally occur in the pools inhabited by this species) and habitat loss due to degradation (primarily from illegal trash dumping). The pools where this species occurs on Maui are located within a State Natural Area Reserve (NAR). Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. On the island of Hawaii, the species occurs within a National Park, and collection and disturbance are also prohibited. However, enforcement of these prohibitions is difficult, and the negative effects from the introduction of fish are extensive and happen quickly. Therefore, threats to this species could have a significant adverse effect on the survival of the species, and are of a high magnitude. However, the threats are nonimminent, because surveys in 2004 and 2007 did not find fish in the pools where these shrimp occur on Maui or the island of Hawaii. Also, there was no evidence of recent habitat degradation at those pools. We assigned this species an LPN of 5.

Anchialine pool shrimp (*Procaris hawaiana*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Procaris hawaiana* is an anchialine pool-inhabiting species of shrimp belonging to the family Procarididae. This species is endemic to the Hawaiian Islands, and is currently known from two populations on the island of Maui and one population on the island of Hawaii. The primary threats to this species are predation from fish (which do not naturally occur in the pools inhabited by this species) and habitat loss due to degradation (primarily from illegal trash dumping). The pools where this species occurs on Maui are located within a State Natural Area Reserve (NAR). Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. However, enforcement of these prohibitions is difficult and the negative effects from the introduction of fish are extensive and happen quickly. In addition, there are no conservation efforts underway to alleviate the potential for any of these threats in the one pool on the island of Hawaii. Therefore, threats to this species could have a significant adverse effect on the survival of the species, and thus remain at a high magnitude. However, the threats to the species are nonimminent because, during 2004 and 2007 surveys, no fish were observed in the pools where these shrimp occur on Maui, and no fish were observed in the one pool on the island of Hawaii during a site visit in 2005. In addition, there were no signs of trash dumping or fill in any of the pools where the species occurs. Therefore, we assigned this species an LPN of 5.

Anchialine pool shrimp (*Vetericaris chaceorum*) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Vetericaris chaceorum* is an anchialine pool-inhabiting species of shrimp belonging to the family Procarididae; it is the only species in its genus. This species is endemic to the Hawaiian Islands, and is only known from one population in a single pool on the island of Hawaii. The primary threats to this species are predation from nonnative fish and habitat degradation (primarily by contamination from illegal trash dumping). This species would be highly vulnerable to predation by any intentionally or accidentally introduced fish, or contamination from illegal dumping into its single known location. This pool lies within lands administered by the State of Hawaii Department of Hawaiian Home Lands. The threats to *V. chaceorum* from habitat degradation and destruction, as well as from predation by nonnative fish are of high magnitude, because this species occurs in only one pool; thus the threats could significantly impair the survival of the species. All individuals of this species may be adversely affected by a single dumping of trash or release of nonnative fish in its only known pool. However, the threats are nonimminent, as fish have not been introduced into the pool (nor is there any reason to believe that introduction is imminent) and a site visit in early 2005 showed there were no signs of dumping or fill. Therefore we assigned this species an LPN of 4 because the threats are of high magnitude but nonimminent, and the species is in a monotypic genus.

Flowering Plants

Abronia alpina (Ramshaw Meadows sand-verbena) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Abronia alpina* is a small perennial herb, 2.5 to 15.2 centimeters (1 to 6 inches) across forming compact mats with lavender-pink, trumpet-shaped, and generally fragment flowers. *Abronia alpina* is known from one main population center in Ramshaw Meadow on the Kern Plateau of the Sierra Nevada, California and from one subpopulation found in adjacent Templeton Meadow. The total estimated area occupied is approximately 6 hectares (15 acres). The population fluctuates from year to year without any clear trends. Population estimates from 1985-1994 range from a low of 69,652 plants in 1986 to 132,215 plants in 1987. Surveys conducted since 1994 indicate that no significant changes have occurred in population size or location, although, the 2003 survey showed population numbers to be at the low end of the range. The population was last surveyed in 2007.

The factors currently threatening *Abronia alpina* include natural and human habitat alteration, hydrologic changes to the water table, and recreational use within meadow habitats. Lodgepole pine encroachment has altered the meadow and trees are becoming established within *A. alpina* habitat. Lodgepole pine encroachment may alter soil characteristics by increasing organic matter levels, decreasing porosity, and moderating diurnal temperature fluctuations thus reducing the competitive ability of *A. alpina* to persist in an environment more hospitable to other plant species. The Ramshaw Meadow ecosystem is subject to potential alteration by lowering of the water table due to downcutting of the South Fork of the Kern River (SFKR). The SFKR flows through Ramshaw Meadow and at times comes within 15 m (50 ft) of *A. alpina* habitat, particularly in the vicinity of five subpopulations. The habitat occupied by *A. alpina* directly borders the meadow system supported by the

SFKR. Drying out of the meadow system could potentially affect *A. alpina* pollinators and seed dispersal agents. Established hiker, packstock, and cattle trails pass through *A. alpina* subpopulations. Two main hiker trails pass through Ramshaw Meadow, but were rerouted out of *A. alpina* subpopulations, where feasible, in 1988 and 1997. Remnants of cattle trails that pass through subpopulations in several places receive occasional incidental use by horses and sometimes hikers. Cattle use, however, currently, is not a threat due to the 2001 implementation of a ten-year moratorium on the Templeton allotment that prohibits cattle from all *A. alpina* locations. The Service is funding studies to determine appropriate conservation measures and working with the U.S. Forest Service on developing a conservation strategy for the species. The threats are of a low magnitude and nonimminent because of the conservation actions already implemented. We continue to assign an LPN of 11 for *A. alpina* based on nonimminent threats of moderate to low magnitude.

Arabis georgiana (Georgia rockcress) – The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Georgia rockcress grows in a variety of dry situations, including shallow soil accumulations on rocky bluffs, ecotones of gently sloping rock outcrops, and in sandy loam along eroding river banks. It is occasionally found in adjacent mesic woods, but it will not persist in heavily shaded conditions. Currently, approximately 20 populations are known from the Gulf Coastal Plain, Piedmont, and Ridge and Valley physiographic provinces of Alabama and Georgia. Populations of this species typically have a limited number of individuals over a small area. Habitat degradation, rather than outright habitat destruction, is the most serious threat to the continued existence of this species. Disturbance associated with timber harvesting, road building, and grazing has created favorable conditions for the invasion of exotic weeds, especially Japanese honeysuckle (*Lonicera japonica*), in this species' habitat. A large number of the populations are currently or potentially threatened by the presence of exotics. The heritage programs in Alabama and Georgia have initiated plans for exotic control at several populations. The magnitude of threats to this species is moderate to low due to the number of populations (20) across multiple counties in two states and due to the fact that several sites are protected. However, since a number of the populations are currently being affected by nonnative plants, the threat is imminent. Thus, we assigned an LPN of 8 to this species.

Argythamnia blodgettii (Blodgett's silverbush) – The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. Blodgett's silverbush occurs in Florida and is found in open, sunny areas in pine rockland, edges of rockland hammock, edges of coastal berm, and sometimes disturbed areas at the edges of natural areas. Plants can be found growing from crevices on limestone, or on sand. The pine rockland habitat where the species occurs in Miami-Dade County and the Florida Keys requires periodic fires to maintain habitat with a minimum amount of hardwoods. There are approximately 27 extant occurrences, 12 in Monroe County and 15 in Miami-Dade County; many occurrences are on conservation lands. However, 4–5 sites are recently thought to be extirpated. The estimated population size of Blodgett's silverbush in the Florida Keys, excluding Big Pine Key, is roughly 11,000; the estimated population in Miami-Dade County is 375 to 13,650 plants.

Blodgett's silverbush is threatened by habitat loss, which is exacerbated by habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Remaining habitats are fragmented. Threats such as road maintenance and enhancement, infrastructure, and illegal dumping threaten some occurrences. Blodgett's silverbush is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Climatic change, particularly sea-level rise, is a long-term threat that is expected to continue to affect pine rocklands and ultimately reduce the extent of available habitat, especially in the Keys. Overall, the magnitude of threats is moderate because not all of the occurrences are affected by the threats. In addition, land managers are aware of the threats from exotic plants and lack of fire, and are, to some extent, working to reduce this threat where possible. While some of the threats are occurring in some areas, the threat from development is nonimminent since most occurrences are on public land, and sea-level rise is not currently affecting this species. Overall, the threats are nonimminent. Thus, we assigned an LPN of 11 to this species.

Artemisia campestris var. *wormskioldii* (Northern wormwood) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Historically known from eight sites, northern wormwood is currently known from two populations in Klickitat and Grant Counties, Washington. This plant is restricted to exposed basalt, cobbly-sandy terraces, and sand habitat along the shore and on islands in the Columbia River. The two populations are separated by 200 miles (322 kilometers) of the Columbia River and three large hydroelectric dams. The Klickitat County population is declining; the status is unclear for the Grant County population; however, both are vulnerable to environmental variability. Surveys have not detected any additional plants.

Threats to northern wormwood include direct loss of habitat through regulation of water levels in the Columbia River and placement of riprap along the river bank; human trampling of plants from recreation; competition with nonnative invasive species; burial by wind- and water-borne sediments; small population sizes; susceptibility to genetic drift and inbreeding; and the potential for hybridization with two other species of *Artemisia*. Ongoing conservation actions have reduced trampling, but have not eliminated or reduced the other threats at the Grant County site. Active conservation measures are not currently in place at the Miller Island site. The magnitude of threat is high for this subspecies because, although the two remaining populations are widely separated and distributed, one or both populations could be eliminated by a single disturbance. The threats are imminent because recreational use is ongoing, invasive nonnative species occur at both sites, erosion of the substrate is ongoing at the Klickitat County site, and high water flows are random, naturally occurring events that may occur unpredictably in any year. Therefore, we have retained an LPN of 3 for this subspecies.

Astragalus tortipes (Sleeping Ute milkvetch) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Sleeping Ute milkvetch is a perennial plant that grows only on the Smokey Hills layer of the Mancos Shale Formation on the Ute Mountain Ute Indian Reservation in Montezuma County, Colorado. In 2000, 3,744 plants were recorded at 24 locations covering 500 acres within an overall range of 64,000 acres. Available information from 2000 indicates that the species remains stable. Previous and ongoing

threats from borrow pit excavation, off-highway vehicles, irrigation canal construction, and a prairie dog colony have had minor impacts that reduced the range and number of plants by small amounts. Off-highway vehicle use of the habitat has reportedly been controlled by fencing. Oil and gas development is active in the general area, but the Service has received no information to indicate whether there is development within plant habitat. The Tribe reported this year that the status of the species remains unchanged, the population is healthy, and that a management plan for the species is currently in draft form. Despite these positive indications, we have no documentation concerning the current status of the plants, condition of habitat, and terms of the species management plan being drafted by the Tribe. Thus, at this time we cannot accurately assess whether populations are being adequately protected from previously existing threats. The threats are moderate in magnitude, since they have had minor impacts and, based on information we have, the population appears to be stable. Until the management plan is completed and made available, there are no regulatory mechanisms in place to protect the species. Overall, we conclude threats are nonimminent. Therefore, we assigned an LPN of 11 to this species.

Bidens amplectens (Kookoolau) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Bidens campylotheca ssp. *pentamera* (Kookoolau) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Bidens campylotheca ssp. *waihoiensis* (Kookoolau) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Bidens conjuncta (Kookoolau) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Bidens micrantha ssp. *ctenophylla* (Kookoolau) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This subspecies is an erect, perennial herb found in open mixed shrubland to dry *Metrosideros* (ohia) forest on the island of Hawaii, Hawaii. This subspecies is endemic to the island of Hawaii, where wild populations are restricted to an area of less than 10 square miles (26 square kilometers). *Bidens micrantha* ssp. *ctenophylla* is known from four wild and four outplanted populations totaling approximately 130 to 140 individuals, the majority of which occur in only two (wild) populations. This subspecies is threatened by fire and nonnative plants, and two populations are threatened by residential and commercial development. The threats to *B. micrantha* ssp. *ctenophylla* from fire and nonnative plants are of a high magnitude and imminent because they are occurring rangewide, they threaten the continued existence of the species, and no efforts for their control have been undertaken. Therefore, we retained an LPN of 3 for this subspecies.

Brickellia mosieri (Florida brickell-bush) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is restricted to pine rocklands of Miami-Dade County, Florida. This habitat requires periodic prescribed fires to maintain the low understory and prevent encroachment by native tropical hardwoods and exotic plants, such as Brazilian pepper. Only one large population is known to exist; 15 other occurrences contain less than 100 individuals. Eleven occurrences are on conservation lands. Climatic changes and sea-level rise are long-term threats that will reduce the extent of habitat. This species is threatened by habitat loss, which is exacerbated by habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Remaining habitats are fragmented. The species is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Due to its restricted range and the small sizes of most isolated occurrences, this species is vulnerable to environmental (catastrophic hurricanes), demographic (potential episodes of poor reproduction), and genetic (potential inbreeding depression) threats. Ongoing conservation efforts include projects aimed at facilitating restoration and management of privately owned pine rockland habitats in Miami-Dade County and projects to restore suitable habitat and reintroduce and establish new populations of the plants in pine rocklands. The Service is also pursuing additional habitat restoration projects, which could help further improve the status of the species. Because of these efforts, the overall magnitude of threats is moderate. The threats are ongoing and thus imminent. We assigned this species an LPN of 8.

Calamagrostis expansa (Maui reedgrass) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is a robust, short-rhizomatous perennial found in wet forest, open bogs, and bog margins on the islands of Maui and Hawaii, Hawaii. Historically rare, *C. expansa* was restricted to wet forest and bogs on Maui. Its historical status is unknown on Hawaii. Currently, this species is known from 11 populations totaling approximately 230 individuals on Maui, and was recently discovered in nine populations totaling approximately 350 individuals on the island of Hawaii. *Calamagrostis expansa* is threatened by pigs that degrade and destroy habitat and by nonnative plants that outcompete and displace it. Feral pigs have been fenced out of most of the west Maui populations, and nonnative plants have been reduced in the fenced areas. However, the threats are not controlled and are ongoing in the remaining unfenced populations on Maui and at all of the populations on the island of Hawaii. Therefore, overall the threats from feral pigs and nonnative plants are of a high magnitude and imminent for *C. expansa*, and we retained an LPN of 2 for this species.

Calamagrostis hillebrandii (Hillebrand's reedgrass) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Calamagrostis hillebrandii* is a slender, short-rhizomatous perennial found in *Metrosideros-Machaerina* (ohia-uki) montane wet bog or *Metrosideros-Rhynchospora-Oreobolus* (ohia-kuolohia-oreobolus) mixed bog on Maui, Hawaii. This species is known from two populations of fewer than 2,000 individuals, restricted to the bogs of west Maui. There is an unconfirmed report of *C. hillebrandii* from central Molokai. This species is currently threatened by pigs that degrade and destroy habitat and nonnative plants that outcompete and displace it. A portion of one population is protected

by an ungulate exclosure fence while the second population may indirectly benefit from conservation actions for ungulate control and control of nonnative plants conducted in a nearby preserve. The threats are imminent because they are ongoing in one of the two known populations. The threats are high in magnitude because they result in direct mortality or significantly negatively affect the reproductive capacity of this species. Therefore, we retained an LPN of 2 for this species.

Calochortus persistens (Siskiyou mariposa lily) – The following summary is based on information contained in our files and the petition we received on September 10, 2001. The Siskiyou mariposa lily is a narrow endemic that is restricted to three disjunct ridge tops in the Klamath-Siskiyou Range on the California-Oregon border. The southern-most occurrence of this species is composed of nine separate sites on approximately 10 hectares (ha) (24.7 acres (ac)) of Klamath National Forest and privately owned lands that stretch for 6 kilometers (km) (3.7 miles (mi)) along the Gunsight-Humbug Ridge, Siskiyou County, California. In 2007, a new occurrence was confirmed in the locality of Cottonwood Peak and Little Cottonwood Peak, Siskiyou County, where several populations are distributed over 164 ha (405 ac) on four individual mountain peaks in the Klamath National Forest and on private lands. The northern-most occurrence consists of not more than five Siskiyou mariposa lily plants that were discovered in 1998, on Bald Mountain, west of Ashland, Jackson County, Oregon.

Major threats include competition and shading by native and nonnative species fostered by suppression of wild fire; increased fuel loading and subsequent risk of wild fire; fragmentation by roads, fire breaks, tree plantations, and radio-tower facilities; maintenance and construction around radio towers and telephone relay stations located on Gunsight Peak and Mahogany Point; and soil disturbance, direct damage, and exotic weed and grass species introduction as a result of heavy recreational use and construction of fire breaks. Dyer's woad (Isatis tinctoria), an invasive, nonnative plant that may prevent germination of Siskiyou mariposa lily seedlings, is now found throughout the southern-most California occurrence, affecting 75 percent of the known lily habitat on Gunsight-Humbug Ridge. Forest Service staff and the Klamath-Siskiyou Wildlands Center cite competition with dyer's woad as a significant and chronic threat to the survival of Siskiyou mariposa lily.

The combination of restricted range, extremely low numbers (five plants) in one of three disjunct populations, poor competitive ability, short seed dispersal distance, slow growth rates, low seed production, apparently poor survival rates in some years, herbivory, and competition from exotic plants threaten the continued existence of this species. These threats are of high magnitude because of their potential to negatively affect the overall survival of the species. Because the threats of competition from exotic plants are being addressed, they are not anticipated to overwhelm a large portion of the species' range in the immediate future, and the threats from low seed production and survival are longer-term threats, overall the threats are nonimminent. Therefore, we assigned a listing priority number of 5 to this species.

Canavalia pubescens (Awikiwiki) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Awikiwiki is a perennial climber found in open lava fields and lowland dryland forest on Maui and Lanai, and is possibly on the island of Niihau, Hawaii. This species is known from five populations totaling a little over 200 individuals. This species is threatened by development (Maui), goats (Maui) and axis deer (Maui and Lanai) that degrade and destroy habitat, and by nonnative plants that outcompete and displace native plants (both islands). Fire is a possible threat at the Keokea population on Maui. An ungulate exclosure fence protects six individuals of *C. pubescens*, and weed control is ongoing at this location on Maui. This species is represented in two *ex situ* collections. Threats to this species from feral goats, axis deer, and nonnative plants are ongoing, or imminent, and of high magnitude because they significantly affect the species throughout its range. Fire is a nonimminent threat. Therefore, we retained an LPN of 2 for this species.

Castilleja christii (Christ's paintbrush) – The following summary is based on information contained in our files and the petition we received on January 2, 2001. *Castilleja christii* is found in one population covering approximately 85 ha (220 ac) on the summit of Mount Harrison in Cassia County, Idaho. This endemic species is considered a hemiparasite (dependent on the health of their surrounding native plant community), and it grows in association with subalpine meadow and sagebrush habitats. The population may be large (greater than 10,000 individual plants); however, the species is considered to be subject to large variations in annual abundance and an accurate current population estimate is not available. Monitoring indicates that reproductive stems per plant and plant density declined between 1995 and 2007.

The primary threat to the species is the nonnative invasive plant smooth brome (*Bromus inermis*). Despite cooperative Forest Service and Service efforts to control smooth brome in 2005, 2006, and 2007, it still persists and has increased in some *C. christii* habitats. Other threats to *C. christii* from recreational use and livestock trespass appear to be mostly seasonal and affect only a small portion of the population, although they too are imminent. The magnitude of the threats to this species is moderate at this time because although the smooth brome control efforts have not eliminated the invasive plant, the Service and Forest Service are continuing their efforts in order to protect this potentially large population of plants. The threat from smooth brome is imminent because the threat still persists at a level that affects the native plant communities that provide habitat for *C. christii*. Thus, we assign an LPN of 8 to this species.

Chamaecrista lineata var. *keyensis* (Big Pine partridge pea) –The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This pea is endemic to the lower Florida Keys, and restricted to pine rocklands, hardwood hammock edges, and roadsides and firebreaks within these ecosystems. Historically, it was known from Big Pine, Cudjoe, No Name, Ramrod, and Little Pine Keys (Monroe County, Florida). In 2005, a small population was detected on lower Sugarloaf Key, but this population was apparently extirpated later in 2005, due to the effects of Hurricane Wilma. It presently occurs on Big Pine Key, with a very small population on Cudjoe Key. It is fairly well distributed in Big Pine Key pine rocklands, which encompass approximately 580 hectares (1,433 acres), approximately 360 hectares (890 acres) of which are within the Service's National Key Deer Refuge (NKDR). Over 80 percent of the population probably exists on NKDR, with the remainder distributed among State, County, and private properties. Hurricane Wilma (October 2005) resulted in a storm surge that covered most of Big Pine Key with sea water. The surge reduced the population by as much as 95 percent in some areas.

Pine rockland communities are maintained by relatively frequent fires. In the absence of fire, shrubs and trees

encroach on pine rockland and this subspecies is eventually shaded out. NKDR has a prescribed fire program, although with many constraints on implementation. Habitat loss due to development was historically the greatest threat to the pea. Much of the remaining habitat is now protected on public lands. Absence of fire now appears to be the greatest of the deterministic threats. Given the recent increase in hurricane activity, storm surges are the greatest of the stochastic threats. The small range and patchy distribution of the subspecies increases risk from stochastic events. Climatic changes and sea-level rise are serious long-term threats. Models indicate that even under the best of circumstances, a significant proportion of upland habitat will be lost on Big Pine Key by 2100. Additional threats include restricted range, invasive exotic plants, roadside dumping, loss of pollinators, seed predators, and development. We maintain the previous assessment that hurricane storm surges, lack of fire, and limited distribution results in a moderate magnitude of threat because a large part of the range is on conservation lands wherein threats are being controlled, although fire management is at much slower rate than is required. The immediacy of hurricane threats is difficult to characterize. Sea-level rise remains uncontrolled, but overall, is nonimminent. Overall, the threats from limited distribution and inadequate fire management are imminent since they are ongoing. Therefore, we retained an LPN of 9 for Big Pine partridge pea.

Chamaesyce deltoidea ssp. *pinetorum* (Pineland sandmat) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The pineland sandmat in only known from Miami-Dade County, Florida. The largest occurrence, estimated at more than 10,000 plants, is located on Long Pine Key within Everglades National Park. All other occurrences are smaller and are in isolated pine rockland fragments in heavily urbanized Miami-Dade County.

Occurrences on private lands and on one county-owned parcel are at risk from development and habitat degradation and fragmentation. Conditions related to climate change, particularly sea-level rise, will be a factor over the long-term. All occurrences of the species are threatened by habitat loss and degradation due to fire suppression, the difficulty of applying prescribed fire, and exotic plants. These threats are severe within small and unmanaged fragments in urban areas. However, the threats of fire suppression and exotics are reduced on lands managed by the National Park Service. Another threat is hydrology changes. Hydrology has been altered within Long Pine Key due to artificial drainage, which lowered ground water, and construction of roads, which either impounded or diverted water. Regional water management intended to restore the Everglades could negatively affect the pinelands of Long Pine Key. At this time, we do not know whether the proposed restoration and associated hydrological modifications will have a positive or negative effect on pineland sandmat. This narrow endemic may be vulnerable to catastrophic events and natural disturbances, such as hurricanes. Overall, the magnitude of threats to this species is moderate, since by applying regular prescribed fire, the National Park Service has kept Long Pine Key's pineland vegetation intact and relatively free of exotic plants, and the extent to which proposed restoration will negatively affect this subspecies are unclear. Overall, the threats are nonimminent since fire management at the largest occurrence is regularly conducted, and sea-level rise and hurricanes are longer-term threats. Therefore, we assigned a LPN of 12 to this subspecies.

Chamaesyce deltoidea ssp. *serpyllum* (Wedge spurge) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Systematic surveys of publicly owned pine rockland throughout this plant's range were conducted during 2005-2006 and 2007-2008 to determine population size and distribution. Wedge spurge is a small prostrate herb. It was historically, and remains, restricted to pine rocklands on Big Pine Key in Monroe County, Florida. Pine rocklands encompass approximately 580 hectares (1,433 acres) on Big Pine Key, approximately 360 hectares (890 acres) of which are within the Service's National Key Deer Refuge (NKDR). Most of the species' range falls within the NKDR, with the remainder on State, County, and private properties. It is not widely dispersed within the limited range. Occurrences are sparser in the southern portion of Big Pine Key, which contains smaller areas of NKDR lands than does the northern portion. Wedge spurge inhabits sites with low woody cover (e.g., low palm and hardwood densities) and usually, exposed rock or gravel.

Pine rockland communities are maintained by relatively frequent fires. In the absence of fire, shrubs and trees encroach on pine rockland and the subspecies is eventually shaded out. NKDR has a prescribed fire program, although with many constraints on implementation. Habitat loss due to development was historically the greatest threat to the wedge spurge. Much of the remaining habitat is now protected on public lands. Absence of fire now appears to be the greatest of the deterministic threats. Given the recent increase in hurricane activity, storm surges are the greatest of the stochastic threats. The small range and patchy distribution of the subspecies increases risk from stochastic events. Climatic changes and sea-level rise are serious long-term threats. Models indicate that even under the best of circumstances, a significant proportion of upland habitat will be lost on Big Pine Key by 2100. Additional threats include restricted range, invasive exotic plants, roadside dumping, loss of pollinators, seed predators, and development. We maintain the previous assessment that low fire return intervals plus hurricane-related storm surges, in combination with a limited, fragmented distribution and threats from sea-level rise, results in a moderate magnitude of threat, in part, because a large part of the range is on conservation lands wherein some threats can be substantially controlled. The immediacy of hurricane threats is difficult to categorize. Sea-level rise remains uncontrolled, but over much of the range is nonimminent compared to other prominent threats. Threats resulting from limited fire occurrences are imminent. Since major threats are ongoing, overall, the threats are imminent. Therefore, we retained an LPN of 9 for this subspecies.

Chorizanthe parryi var. *fernandina* (San Fernando Valley spineflower) – The following summary is based on information contained in our files and the petition we received on December 14, 1999. *Chorizanthe parryi* var. *fernandina* is a low-growing herbaceous annual plant in the buckwheat family. Germination occurs following the onset of late-fall and winter rains and typically represents different cohorts from the seed bank. Flowering occurs in the spring, generally between April and June. *Chorizanthe parryi* var. *fernandina* grows up to 30 centimeters in height and 5 to 40 centimeters across. The plant currently is known from two disjunct localities: the first is in the southeastern portion of Ventura County on a site within the Upper Las Virgenes Canyon Open Space Preserve, formerly known as Ahmanson Ranch, and the second is in an area of southwestern Los Angeles County known as Newhall

Ranch. Investigations of historical locations and seemingly suitable habitat within the range of the species have not revealed any other occurrences.

The threats currently facing San Fernando Valley spineflower include threatened destruction, modification, or curtailment of its habitat or range, and other natural or manmade factors. The threats to *Chorizanthe parryi* var. *fernandina* from habitat destruction or modification are slightly less than they were several years ago. One of the two populations (Upper Las Virgenes Canyon Open Space Preserve) is in permanent, public ownership and is being managed by an agency that is working to conserve the plant; however, the use of adjacent habitat for filming movies is a recently identified threat to the species, and the potential impacts to *Chorizanthe parryi* var. *fernandina* have not yet been fully evaluated. We will be working with the landowners to manage the site for the benefit of *Chorizanthe parryi* var. *fernandina*. The other population (Newhall Ranch) is under the threat of development; however, a Candidate Conservation Agreement (CCA) is being developed with the landowner, and it is possible that the remaining plants can also be conserved. Until such an agreement is finalized, the threat of development and the potential damage to the Newhall Ranch population still exists, as evidenced by the destruction of some plants during installation of an agave farm. Furthermore, cattle grazing on Newhall Ranch may be a current threat. Cattle grazing may harm *Chorizanthe parryi* var. *fernandina* by trampling plants and compacting soil. Grazing activity could also alter the nutrient content of the soils through fecal inputs, which in turn may favor the growth of other plant species that would otherwise not grow so readily on the mineral-based soils. Over time, changes in species composition may render the sites less favorable for the persistence of *Chorizanthe parryi* var. *fernandina*. *Chorizanthe parryi* var. *fernandina* may be threatened by invasive nonnative plants, including grasses, which could potentially displace it from available habitat; compete for light, water, and nutrients; and reduce survival and establishment.

The threats to this plant are high in magnitude since *Chorizanthe parryi* var. *fernandina* is particularly vulnerable to extinction due to its concentration in two isolated areas. The existence of only two areas of occurrence, and a relatively small range, makes the variety highly susceptible to extinction or extirpation from a significant portion of its range due to random events such as fire, drought, or erosion. The primary threat from habitat destruction by development is nonimminent due to the ongoing development of a CCA. We retained a listing priority number of 6 for *Chorizanthe parryi* var. *fernandina* due to a high magnitude of nonimminent threats.

Chromolaena frustrata (Cape Sable thoroughwort) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is found most commonly in open sun to partial shade at the edges of rockland tropical hammock and in coastal rock barrens. There are nine extant occurrences located at five islands in the Florida Keys; two occurrences are within Everglades National Park (ENP). The plant has been extirpated from half of the islands where it occurred. Prior to Hurricane Wilma in 2005, the population was estimated at roughly 5,000 individuals, with all but 500 occurring on one privately owned island. More recently, an estimate of 1,500 plants was given for areas within ENP.

This species is threatened by habitat loss and modification, even on public lands, and habitat loss and degradation due to threats from exotic plants at almost all sites. The species is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. While these factors may also work to maintain coastal rock barren habitat in the long-term, Hurricane Wilma appeared to have had severe impacts, at least in the short-term. Occurrences probably declined due to inundation of its coastal barren and rockland hammock habitats in the short-term; long-term effects on this species are unknown. Sea-level rise is considered a major threat over the long-term. Potential effects from other changes in freshwater deliveries and the construction of the Buttonwood Canal are unknown. Problems associated with small population size and isolation are likely major factors, as occurrences may not be large enough to be viable; this narrowly endemic plant has uncertain viability at most locations, especially following Hurricane Wilma. Thus, these factors constitute a high magnitude of threat. The threats of small population size, isolation, and uncertain viability are imminent because they are ongoing. As a result, we assigned an LPN of 2 to this species.

Consolea corallicola (Florida semaphore cactus) – The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Florida semaphore cactus is endemic to the Florida Keys, and was discovered on Big Pine Key in 1919, but that population was extirpated as a result of road building and poaching. This cactus grows close to salt water on bare rock with a minimum of humus soil cover in or along the edges of hammocks near sea level. The species is known to occur naturally only in two areas, Swan Key within Biscayne National Park and Little Torch Key. Outplantings have been attempted in several locations in the upper and lower Keys; however, success has been low. Few plants remain in the population at The Nature Conservancy's Torchwood Hammock Preserve on Little Torch Key. During monitoring work conducted in 2005, a total of 655 plants were documented at the Swan Key population. In 2008 the population was estimated by Biscayne National Park staff to consist of at least 600 plants. The cactus does not propagate sexually, and asexual reproduction is the main life-history strategy of this species. Recent genetic studies have shown no variation within populations and very limited variation between populations. Findings support the conclusion that the Swan Key (upper Keys), Little Torch Key, and Big Pine Key (outplanting; lower Keys) populations are clonally derived and genetically distinct from each other. Studies examining the reproductive biology of the species indicate that all extant wild and cultivated plants are male.

The causes for the population decline of this species include destruction or modification of habitat, predation from nonnative *Cactoblastis cactorum* moths and disease, poaching and vandalism, sea-level rise, and hurricanes. Sea level rise is considered a serious threat to the species and its habitat; all extant populations are located in low-lying areas. All remaining populations are under threat of predation from the exotic moth and are susceptible to crown rot disease. Because of low population numbers, lack of variation between and within populations, and reproductive problems, the threats are of high magnitude. The numerous threats are ongoing and therefore, are imminent. Thus, we assigned this species an LPN of 2.

Cordia rupicola (no common name) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Cordia rupicola*, a small shrub, has been described from southwestern Puerto Rico, Vieques Island, and Anegada Island (British Virgin Islands). All sites lay within the subtropical dry forest life

zone overlying a limestone substrate. *Cordia rupicola* has a restricted distribution. Currently, approximately 226 individuals are known from 3 locations in Puerto Rico: Peñuelas and Guánica Commonwealth Forests and Vieques National Wildlife Refuge. Additionally, the species is reported as common on Anegada Island.

This species is threatened by maintenance of trails and power line right-of-ways in the Guánica Commonwealth Forest, residential development in Peñuelas, and residential and commercial development in Anegada Island. This species is also vulnerable to natural (e.g., hurricanes) or manmade (e.g., human-induced fires) threats. Approximately 68 percent of the currently known reproductive adults are located in the Guánica Commonwealth Forest where, due to the difficulty in identifying this species, it may be threatened by management and maintenance activities; another 32 percent of the currently known reproductive adults are located on privately owned property where habitat destruction or modification may affect this species. Since threats may significantly affect the majority of the reproducing population, the magnitude of the threats is high. The population of *C. rupicola* on Anegada Island is currently in good condition and the threats this species faces there are ones that will arise in the future, if conservation measures are not implemented and long-term impacts are not averted. For these reasons, the threats to the species as a whole are nonimminent. Therefore we have assigned a LPN of 5 to this species.

Cyanea asplenifolia (Haha) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Cyanea calycina (Haha) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Cyanea kunthiana (Haha) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Cyanea lanceolata (Haha) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Cyanea obtusa (Haha) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Cyanea tritomantha (ʻAku) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Cyanea tritomantha* is a palm-like tree found in *Metrosideros-Cibotium* (ohia-hapuu) montane wet forest on the island of Hawaii. This species is known from 16 populations with a total of approximately 300 to 400 individuals. *Cyanea tritomantha* is threatened by pigs and cattle that degrade and destroy habitat, and nonnative plants that outcompete and displace it. Potential threats to this species include predation by feral pigs, cattle, rats, and slugs that may directly prey upon and defoliate individuals, and human trampling of individuals located near trails. Feral pigs and cattle have been fenced out of three outplanted populations of *C. tritomantha*, and nonnative plants have been reduced in the fenced areas; however, there are no efforts to control the ongoing and imminent threats to the other 13 populations. The threats continue to be of a high magnitude to *C. tritomantha* because they significantly affect the species resulting in direct mortality or reduced reproductive capacity. They are ongoing and therefore imminent for more than seventy-five percent of the population where no control measures have been implemented. Because the threats continue to be of a high magnitude and are imminent for the unmanaged populations, we retained an LPN of 2 for this species.

Cyrtandra filipes (Haiwale) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Haiwale is a shrub found in lowland to montane wet forest on Maui and Molokai, Hawaii. Historically rare, *C. filipes* was found in southeastern Molokai and west Maui. Currently, this species is known from 10 populations, 3 on Molokai and 7 on west Maui, totaling approximately 2,000 individuals. There is some question as to the true identity of the Maui populations, which do not fit the description of the species precisely. If, upon further taxonomic study, the Maui populations are determined not to be this species, then it is even rarer, with only the Molokai populations of a few individuals remaining. *Cyrtandra filipes* is threatened by pigs, goats, and deer that degrade and destroy habitat and may prey upon it, by nonnative plants that outcompete and displace it, and potentially by predation by rats and slugs. Landslides are a likely threat to two populations. Feral pigs have been fenced out of one population of *C. filipes* on Maui, and strategic fencing for axis deer is under construction on west Maui, but deer are able to jump over most pig exclusion fences, so they are still considered a threat. Nonnative plants are being reduced in the population that is fenced but all populations are potentially threatened by rats and slugs. The threats from pigs and nonnative plants are of a high magnitude because of their severity and the fact that they occur in eight of the 10 known populations. In addition, these threats are imminent because they are ongoing. Therefore, we retained an LPN of 2 for this species.

Cyrtandra kaulantha (Haiwale) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Cyrtandra oxybapha (Haiwale) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Cyrtandra sessilis (Haiwale) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Dalea carthagenensis ssp. *floridana* (Florida prairie-clover) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Dalea carthagenensis* var. *floridana* occurs in Big Cypress National Preserve (BCNP) in Monroe and Collier Counties, Florida. It is also known from small populations in Miami-Dade County. There are a total of nine extant

occurrences, most of which are on conservation land.

Existing occurrences are extremely small and may not be viable, especially those in Miami-Dade County. Remaining habitats are fragmented. Climatic changes and sea-level rise are long-term threats that are expected to reduce the extent of habitat. This plant is threatened by habitat loss and degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Damage to plants by off-road vehicles is a serious threat within the BCNP; the threat from illegal mountain biking at the R. Hardy Matheson Preserve has been reduced. One location within BCNP is threatened by changes in mowing practices; this threat is low in magnitude. This species is being parasitized by the introduced insect lobate lac scale at some localities (e.g., R. Hardy Matheson Preserve), but we do not know the extent of this threat. This plant is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Due to its restricted range and the small sizes of most isolated occurrences, this species is vulnerable to environmental (catastrophic hurricanes), demographic (potential episodes of poor reproduction), and genetic (potential inbreeding depression) threats. The magnitude of threats is high, and threats are imminent because of the limited number of occurrences and the small number of individual plants at each occurrence. In addition, even though many sites are on conservation lands, these plants still face significant ongoing threats. Therefore, we have assigned an LPN of 3 to this subspecies.

Dichanthelium hirstii (Hirsts' panic grass) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *D. hirstii* is a perennial grass that produces erect leafy flowering stems from May to October. *D. hirstii* occurs in coastal plain intermittent ponds, usually in wet savanna or pine barren habitats and is found at only two sites in New Jersey, one site in Delaware, and one site in North Carolina. While all four extant *D. hirstii* populations are located on public land or privately owned conservation lands, natural threats to the species from encroaching vegetation and fluctuations in climatic conditions remain of concern and may be exacerbated by anthropomorphic factors occurring adjacent to the species' wetland habitat. Given the low numbers of plants found at each site, even minor changes in the species' habitat could result in local extirpation. Loss of any known sites could result in a serious protraction of the species' range. However, the most immediate and severe of the threats to this species (i.e., ditching of the Laboundsky Pond site, and encroachment of aggressive vegetative competitors) have been curtailed or are being actively managed by The Nature Conservancy at one New Jersey site and by the Delaware Division of Fish and Wildlife and Delaware Natural Heritage Program at the Assawoman Pond, Delaware site. Based on nonimminent threats of a high magnitude, we retain an LPN of 5 for this species.

Digitaria pauciflora (Florida pineland crabgrass) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Pine rocklands in Miami-Dade County have largely been destroyed by residential, commercial, and urban development and agriculture. With most remaining habitat having been negatively altered, this species has been extirpated from much of its historical range, including extirpation from all areas outside of National Parks. Two large occurrences remain within Everglades National Park and Big Cypress National Preserve. Although privately owned pine rocklands and prairies are at risk to development, the plants on Federal lands are protected from this threat. However, extant occurrences are in low-lying areas and will be affected by climate change and rising sea level.

This species is threatened by habitat loss and degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and exotic plants. Since the only remaining populations are on lands managed by the National Park Service, the threats of fire suppression and exotics are somewhat reduced. The presence of the exotic Old World climbing fern is of particular concern due to its ability to spread rapidly. In Big Cypress National Preserve, plants have been threatened by off-road vehicle use. Another threat is hydrology changes. Hydrology has been altered within Long Pine Key due to artificial drainage, which lowered ground water, and construction of roads, which either impounded or diverted water. Regional water management intended to restore the Everglades has the potential to affect the pinelands of Long Pine Key, where a large population occurs. At this time, it is not known whether Everglades restoration will have a positive or negative effect. This narrow endemic may be vulnerable to catastrophic events and natural disturbances, such as hurricanes. Overall, the magnitude of threats is high because only two occurrences remain, and various threats exist. Impacts from climate change and sea-level rise are expected to be severe in the future. The majority of threats are nonimminent as they are long-term in nature (water management, hurricanes, and sea-level rise). Therefore, we assigned an LPN of 5 for this species.

Echinomastus erectocentrus var. *acunensis* (Acuna cactus) – The following summary is based on information contained in our files and the petition we received on October 30, 2002. The Acuna cactus is known from six sites on well-drained gravel ridges and knolls on granite soils in Sonoran Desert scrub association at 1300 to 2000 feet elevation.

Habitat destruction has been a threat in the past and is a potential future threat to this species. New roads and illegal activities have not yet directly affected the cactus populations at Organ Pipe Cactus National Monument, but areas in close proximity to these known populations have been altered. Cactus populations located in the Florence area have not been monitored and these populations may be in danger of habitat loss due to recent urban growth in the area. Urban development near Ajo, Arizona, as well as that near Sonoyta, Mexico, is a significant threat to the Acuna cactus. Populations of the Acuna cactus within the Organ Pipe Cactus National Monument have shown a 50 percent mortality rate in recent years. The reason(s) for the mortality are not known, but continuing drought conditions are thought to play a role. The Arizona Plant Law and the Convention on International Trade in Endangered Species of Wild Fauna and Flora provide some protection for the Acuna cactus. However, illegal collection is a primary threat to this cactus variety and has been documented on the Organ Pipe Cactus National Monument in the past. The threats continue to be of a high magnitude. The threats are imminent, mainly due to the continued decline of the species, most likely from effects from the on-going drought. Conditions in 2006 to 2008 worsened, and the drought is prevalent throughout the range of this variety. For this reason, drought as the main threat is on-going and is a significant threat to the long-term viability of this variety. Therefore, we assigned an LPN of 3 to this cactus variety.

Erigeron lemmonii (Lemmon fleabane) – The following summary is based on information contained in our files and the petition we received in July 1975. The species is known from one site in a canyon in the Fort Huachuca Military

Reservation (Fort Huachuca) of southeastern Arizona. In the 1990s, surveys found approximately 450 plants. A survey in 2006 found approximately 950 plants; occupied habitat encompasses about 1 square kilometer.

The threats to this species are from catastrophic wildfire in the canyon and on-going drought conditions. We do not know if this species has any adaptations to fire. Due to its location on cliffs, we suspect that fires that may have occurred at more regular intervals and burned at low intensities may have had little to no effect on this species. Lack of fire and the accumulated fuel load that lead to high fire intensity and associated heat may now damage or kill plants on adjacent cliffs, especially near the ground. Plants that are much higher on the cliff face would probably not be affected. We consider the magnitude of threats to be moderate rather than high because we believe that not all of the population would be adversely affected by a wildfire or drought. The threats are still imminent because the likelihood of a fire is high. The LPN for Lemmon fleabane remains an 8 due to moderate, imminent threats.

Eriogonum codium (Umtanum Desert buckwheat) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is a long-lived, slow-growing, woody perennial plant that forms low dense mats. The species occupies a single location on the Hanford National Monument in Washington State. It is found only on an exposed basalt ridge; we do not know if this association is related to the chemical or physical characteristics of the bedrock or other factors. Individual plants may exceed 100 years of age, based on counts of annual growth rings. A count in 1997 reported 5,228 individuals; by 2005 the figure had dropped to 4,418, declining 15 percent over eight years. A population viability analysis in 2006 based on 9 years of demographic data estimated that that there is a 72 percent chance of a decline of 50 percent within the next 100 years. Another analysis is expected in 2009, based on 12 years of demographic monitoring.

The major threats to the species are wildfire, firefighting activities, trampling, and invasive weeds. However, the relationship between the decline in population numbers and the known threats is not understood at this time. With the possible exception of wildfire, the observed decline in population numbers and recruitment since 1997 is not directly attributable to the currently known threats. Because the population is small, limited to a single site, and sensitive to fire and disturbance, the species remains vulnerable to the identified threats. The magnitude of threats is high because, given the limited range of the species, any of the threats could adversely affect its continued existence. The threats are ongoing and, therefore, imminent. Because the species continues to be vulnerable to these threats, we retained an LPN of 2 for this species.

Eriogonum corymbosum var. *nilesii* (Las Vegas buckwheat) – The following summary is based on information contained in our files and the petition we received on April 23, 2008. The Las Vegas buckwheat is a woody perennial shrub up to 4 feet high with a mounding shape. The flowers of this plant are numerous, small and yellow with small bract-like leaves at the base of each flower. The Las Vegas buckwheat is very conspicuous when flowering in late September and early October. It is restricted to gypsum soil outcroppings in Clark and Lincoln Counties, Nevada. Only recently has the taxonomy been verified using molecular genetic analyses.

Loss of habitat from development is a significant threat with over 95 percent of the historical range and potential habitat of the subspecies lost to development. In 2005, the Las Vegas buckwheat was known from 9 locations on approximately 1,150 acres. However, since that time, approximately 290 acres were or soon will be developed, and the current distribution of the plant occupies about 890 acres. In addition, off-highway vehicle activity and other public land uses (casual public use, mining, and illegal dumping) directly and indirectly threaten over half of the remaining habitat. To date, regulatory mechanisms to protect the Las Vegas buckwheat are inadequate. Its designation as a Bureau of Land Management (BLM) special status species and limited resource and law enforcement personnel have not provided adequate protection on lands managed by the BLM. The Las Vegas buckwheat is not protected by the State of Nevada or any other regulatory mechanisms on other federal lands. Conservation measures are being developed that could reduce the risks to occupied habitat, but we believe it would be premature to consider these measures sufficiently complete as to remove these threats. The magnitude of threats is high since the more significant threats (development and surface mining) would result in direct mortality of the plants in over half of its known habitat. While both development and mining are very likely to occur in the future, they are not expected to happen in the immediate future, and thus, the threats are nonimminent. Accordingly, we assigned the Las Vegas buckwheat an LPN of 6.

Eriogonum kelloggii (Red Mountain buckwheat) – The following summary is based on information contained in our files and information provided by the California Department of Fish and Game. No new information was provided in the petition we received on May 11, 2004. Red Mountain buckwheat is a perennial herb endemic to serpentine habitat of lower montane forests found between 1,900 and 4,100 feet. Its distribution is limited to the Red Mountain and Little Red Mountain areas of Mendocino County, California, where it occupies in excess of 81 acres, and 900 square feet, respectively. Occupied habitat at Red Mountain is scattered over 4 square miles. Total population size has not been determined, but a preliminary estimate suggests the population may be in excess of 63,000 plants, occupying more than 44 discrete habitat polygons. Intensive monitoring of permanent plots on three study sites in Red Mountain suggests considerable annual variation in plant density and reproduction, but no discernable population trend was evident in two of three study sites. One study site showed a 65 percent decline in plant density over 11 years.

The primary threat to this species is the potential for surface mining for chromium and nickel. Virtually the entire distribution of Red Mountain buckwheat is either owned by mining interests, or is covered by existing mining claims, none of which are currently active. Surface mining would destroy habitat suitability for this species. The species is also believed threatened by tree and shrub encroachment into its habitat, in absence of fire. Some 42 percent of its known distribution occurred within the boundary of the Red Mountain Fire of June, 2008. However, the extent and manner in which *Eriogonum kelloggii* and its habitat were affected by that fire is not yet known. The single population located at Little Red Mountain appears to have been impacted, and perhaps eliminated by fire control efforts. The primary threat of surface mining is high in magnitude because it could extirpate the species in the majority of its range. That threat is nonimminent because none of the mining claims are active. Because of the high-magnitude, nonimminent threat to the small, scattered populations, we assigned a listing priority number of 5 to this species.

Festuca hawaiiensis (no common name) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is a cespitose (growing in dense, low tufts) annual found in dry forest on the island of Hawaii. *Festuca hawaiiensis* is known from four populations totaling approximately 1,000 individuals in and around the Pohakuloa Training Area (PTA). Historically, this species was also found on Hualalai and Puu Huluhulu on Hawaii and possibly Ulupalakua on Maui, but it no longer occurs at these sites. *Festuca hawaiiensis* is threatened by pigs, goats, mouflon, and sheep that degrade and destroy habitat; fire; military training activities; and nonnative plants that outcompete and displace it. Feral pigs, goats, mouflon, and sheep have been fenced out of a portion of the populations of *F. hawaiiensis*, and nonnative plants have been reduced in the fenced areas but the majority of this population is still affected by threats from fire and will require long-term monitoring and management. The threats are imminent because they are not controlled and are ongoing in the remaining, unfenced populations. Firebreaks have been established at two other populations but again fire is an imminent threat to the other two populations that have no firebreaks. The threats are of a high magnitude because they could adversely affect the majority of *F. hawaiiensis* populations resulting in direct mortality or reduced reproductive capacity. Therefore, we retained an LPN of 2 for this species.

Festuca ligulata (Guadalupe fescue) – The following summary is based on information obtained from the original species petition, received in 1975, and from our files, on-line herbarium databases, and scientific publications. Five small populations of Guadalupe fescue, a member of the Poaceae (grass family), have been documented in mountains of the Chihuahuan desert in Texas and in Coahuila, Mexico. Only two extant populations have been confirmed in the last five years, in the Chisos Mountains, Big Bend National Park, Texas, and in the privately owned Maderas del Carmen protected natural area in Coahuila. Despite intensive searches, a population known from Guadalupe Mountains National Park, Texas has not been found since 1952 and is presumed extirpated. Two additional Mexican populations, near Fraile in southern Coahuila, and the Sierra de la Madera in central Coahuila, have not been monitored since 1941 and 1977, respectively. A great amount of potentially suitable habitat in Coahuila has never been surveyed. The potential threats to Guadalupe fescue include changes in the wildfire cycle and vegetation structure, trampling from humans and pack animals, grazing, trail runoff, fungal infection of seeds, small sizes and isolation of populations, and limited genetic diversity. The Service and the National Park Service established a Candidate Conservation Agreement in 2008 to provide additional protection for the Chisos Mountains population, and to promote cooperative conservation efforts with U.S. and Mexican partners. The threats to Guadalupe fescue are of moderate magnitude, and are not imminent, due to the provisions of the Candidate Conservation Agreement and other conservation efforts, as well as the likelihood that other populations exist in mountains of Coahuila that have not been surveyed. We have assigned a LPN of 11 to this species.

Gardenia remyi (Nanu) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Nanu is a tree found in mesic to wet forest on the islands of Kauai, Molokai, Maui, and Hawaii, Hawaii. *Gardenia remyi* is known from 20 populations totaling between 77 and 104 individuals. This species is threatened by pigs, goats, and deer that degrade and destroy habitat and possibly prey upon the species, and by nonnative plants that outcompete and displace it. It is also threatened by landslides on the island of Hawaii. This species is represented in *ex situ* collections. Feral pigs have been fenced out of the west Maui populations of *G. remyi*, and nonnative plants have been reduced in those areas. However, these threats are not controlled and are ongoing in the remaining, unfenced populations, and are, therefore, imminent. In addition, the threat from goats and deer is ongoing and imminent throughout the range of the species, because no goat or deer control measures have been undertaken for any of the populations of *G. remyi*. All of the threats are of a high magnitude because habitat destruction, predation, and landslides could signifcantly affect the entire species resulting in direct mortality or reduced reproductive capacity. Therefore, we retained an LPN of 2 for this species.

Geranium hanaense (Nohoanu) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Geranium hillebrandii (Nohoanu) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Gonocalyx concolor (no common name) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Gonocalyx concolor* is a small, evergreen, epiphytic or terrestrial shrub endemic to Puerto Rico. Currently, *G. concolor* is known from two populations: one at Cerro La Santa and other at Charco Azul, both in the Carite Commonwealth Forest. The forest is located in the Sierra de Cayey and extends through the municipalities of Guayama, Cayey, Caguas, San Lorenzo, and Patillas in southeastern Puerto Rico. The population previously reported in the Caribbean National Forest is apparently no longer extant. In 1996, approximately 172 plants were reported at Cerro La Santa. However, in 2006 only 25 individuals were reported at Cerro La Santa and four individuals located at Charco Azul.

The species is threatened by habitat disturbance related to the maintenance of existing telecommunication facilities at Cerro La Santa, limited distribution (two sites), low population numbers (less then 30 individuals total), and hurricanes. Although the species is located in the Carite Commonwealth Forest, a public forest managed by DNER, applicable laws and regulations are not always effectively enforced and Service personnel have documented some damage to the population located adjacent to existing communication towers at the forest. Because of extremely low population numbers and the vulnerability to threats (maintenance activities and hurricanes), the magnitude of current threats on the species is high. Overall, threats are nonimminent since *G. concolor* is located in the Carite Commonwealth Forest, administered and managed by the DNER for conservation and recreation, and actions that may affect such species are generally scrutinized and measures to minimize or avoid impacts to these species are recommended and implemented. Therefore, we have assigned a listing priority number of 5 to this species.

Hazardia orcuttii (Orcutt's hazardia) – The following summary is based on information contained in our files and the petition we received on March 8,

2001. *Hazardia orcuttii* is an evergreen shrubby species in the Asteraceae (sunflower family). The erect shrubs are 50-100 centimeters (20-40 inches) high. The only known extant native occurrence of this species in the U.S. is in the Manchester Conservation Area in northwestern San Diego County, California. This site is managed by Center for Natural Lands Management. *Hazardia orcuttii* also occurs at a few coastal sites in Mexico, where it has no conservation protections. The occurrences in Mexico are threatened by coastal development from Tijuana to Ensenada. There are approximately 668 native adult plants and 50 seedlings remaining in the U.S., and the population in Mexico is estimated to be 1300 plants. Because the extant population in the U.S. is within an area that receives a great deal of public use, trampling, dumping, and other unintentionally destructive impacts are affecting these *Hazardia orcuttii* plants. This species has a very low reproductive output, although the causes are as-yet unknown. Competition from invasive nonnative plants may pose a threat to the reproductive potential of this species. In one study, 95 percent of the flowers examined were damaged by insects or fungal agents or aborted prematurely, and insects or fungal agents damaged 50 percent of the seeds produced. However, if low seed production is because of ecosystem disruptions, such as loss of effective pollinators, there could be additional threats that need to be addressed. Overall, the threats to *Hazardia orcuttii* are of a high magnitude because they have the potential to significantly reduce the reproductive potential of this species. The threats are nonimminent overall because although trampling and other recreational impacts are ongoing, the most significant threats (invasive nonnative plants and low reproductive output) are nonimminent and long-term in nature. This species faces high-magnitude nonimminent threats so we have assigned this species a listing priority of 5.

Hedyotis fluviatilis (Kamapuaa) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Kamapuaa is a scandent shrub found in mixed shrubland to wet lowland forest on Oahu and Kauai, Hawaii. This species is known from 12 populations totaling 1,000 to 1,400 individuals. *Hedyotis fluviatilis* is threatened by pigs and goats that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Landslides are a potential threat to populations on Kauai. This species is represented in *ex situ* collections; however, there are no other conservation actions implemented for this species. We retained an LPN of 2 because the severity of the threats to the species is high and the threats are ongoing and, therefore, imminent.

Helianthus verticillatus (Whorled sunflower) – See above in ''*Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Hibiscus dasycalyx (Neches River rose-mallow) – The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species, found in eastern Texas, appears to be restricted to those portions of wetlands that are exposed to open sun and normally hold standing water early in the growing season, with water levels dropping during late summer and fall. This habitat has been affected by drainage or filling of floodplain depressions and oxbows, stream channelization, road construction, timber harvesting, agricultural activities (primarily mowing and grazing), and herbicide use. Threats that continue to affect the species include wetland alteration, herbicide use, grazing, mowing during the species' growing and flowering period, and genetic swamping by other *Hibiscus* species.

A 1995 status survey of 10 counties resulted in confirmation of the species at only three sites, but in three separate counties and three different watersheds, suggesting a relatively wide historical range. These three populations were all within highway rights-of-way and vulnerable to herbicides and adjacent agricultural activities. As of 2005, only 20 plants remained at one of these sites. Additional surveys for *Hibiscus dasycalyx* discovered new populations. About 300 plants were found on land owned by Temple-Inland Corporation in east Trinity County. A Candidate Conservation Agreement was developed for this site, but smaller plant numbers have been seen in recent years, possibly due to changes in the wetland's hydrology. Another site discovered on land previously owned by Champion International Corporation (near White Rock Creek in west Trinity County) once supported 300-400 plants. This site was modified in 2007 and will be reassessed in the near future. In west Houston County, a population of 300 to 400 plants discovered on private land has been purchased by the Natural Area Preservation Association in order to protect this land in perpetuity. In east Houston County, a population discovered in Compartment 55 in Davy Crockett National Forest numbered over 1000 in 2006. In 2000, nearly 800 plants were introduced into Compartments 16 and 20 of Davy Crockett National Forest as part of a reintroduction effort. One population retained high numbers (350 in 2006), but was subjected to high water conditions in 2007 and may have been adversely affected. The second site was affected by a change in hydrology and had declined to 50 plants in 2006. In 2004, 200 plants were placed in a wetland in Compartment 11 of Davy Crockett National Forest, but only 10 plants were seen in 2006. High water from heavy spring and summer rains prevented further assessment of these rose-mallow sites.

The threats to the species continue to be of a high magnitude because they can severely affect the survival and reproductive capacity of the species. Overall the threats are nonimminent since they are not currently affecting or likely to affect the majority of the populations of this species in the immediate future. Thus, we have retained an LPN of 5 for the Neches River rose-mallow.

Ivesia webberi (Webber ivesia) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ivesia webberi* is a low, spreading, perennial herb that occurs very infrequently in Lassen, Plumas, and Sierra Counties in California, and in Douglas and Washoe Counties, Nevada. The species is restricted to sites with sparse vegetation and shallow, rocky soils composed of volcanic ash or derived from andesitic rock. Occupied sites generally occur on mid-elevation flats, benches, or terraces on mountain slopes above large valleys along the transition zone between the eastern edge of the northern Sierra Nevada and the northwestern edge of the Great Basin. Currently, the global population is estimated at approximately 4.8 million individuals at 14 known sites. The Nevada sites support nearly 98 percent of the total number of individuals (4.7 million) on about 30 acres (12 hectares) of occupied habitat. The California sites are larger in area, totaling about 156 acres (63 hectares), but support fewer individuals (approximately 115,000).

The primary threats to *I. webberi* include urban development, authorized and unauthorized roads, off-road vehicle activities and other dispersed recreation, livestock grazing and trampling, fire and fire suppression activities including fuels reduction and

prescribed fires, and displacement by noxious weeds. Despite the high numbers of individuals, observations in 2002 and 2004 confirmed that direct and indirect impacts to the species and its habitat, specifically from urban development and off-highway vehicle activity remain high and are likely to increase. However, the U.S. Forest Service has committed to develop a conservation strategy and monitoring program to protect this species on National Forest lands where most population are found, and the State of Nevada has listed the species as critically endangered, which provides a mechanism to track future impacts on private lands. In addition, both the U.S. Forest Service and State of Nevada have agreed to coordinate closely with the Fish and Wildlife Service on all activities that may affect this species. In light of these conservation commitments, we have determined that the threats to Webber ivesia are nonimminent and retained an LPN of 5 for this species.

Joinvillea ascendens ssp. *ascendens* (Ohe) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Ohe is an erect herb found in wet to mesic *Metrosideros polymorpha-Acacia koa* (ohia-koa) forest on the islands of Kauai, Oahu, Molokai, Maui, and Hawaii, Hawaii. Ohe is known from 38 widely scattered populations totaling approximately 180 individuals throughout its range. Plants are typically found as only one or two individuals, with miles between populations. This subspecies is threatened by destruction or modification of habitat due to pigs, goats, and deer, and by nonnative plants that outcompete and displace native plants. Predation by pigs, goats, deer, and rats is a likely threat to this species. Landslides are a potential threat to populations on Kauai and Molokai. Seedlings have rarely been observed in the wild. Seeds germinate in cultivation, but most die soon thereafter. It is uncertain if this rarity of reproduction is typical of this subspecies, or if it is related to habitat disturbance. Feral pigs have been fenced out of a few of the populations of this subspecies, and nonnative plants have been reduced in a few populations that are fenced. However, these threats are not controlled and are ongoing in the many remaining, unfenced populations. This species is represented in *ex-situ* collections. The threats are of high magnitude because habitat degradation, nonnative plants, and predation result in mortaility or adversely affect the reproductive capacity of the majority of populations of this species. The threats are ongoing, and thus are imminent. Therefore, we retained an LPN of 3 for this subspecies.

Korthalsella degeneri (Hulumoa) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Leavenworthia crassa (Gladecress) – The following information is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species of gladecress is a component of glade flora, occurring in association with limestone outcroppings. *Leavenworthia crassa* is endemic to a 13-mile radius area in north central Alabama in Lawrence and Morgan Counties, Alabama, where only six populations of this species are documented. Glade habitats today have been reduced to remnants fragmented by agriculture and development. Populations of this species are now located in glade-like areas exhibiting various degrees of disturbance including pastureland, roadside rights-of-way, and cultivated or plowed fields. The most vigorous populations of this species are located in areas which receive full, or near full, sunlight with limited herbaceous competition. The magnitude of threat is high for this species, because with the limited number of populations, the threats could result in direct mortality or reduced reproductive capacity of the species. This species appears to be able to adjust to periodic disturbances and the potential impacts to populations from competition, exotics, and herbicide use are nonimminent. Thus, we assigned an LPN of 5 to this species.

Leavenworthia texana (Texas golden gladecress) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Leavenworthia texana* occurs only on the Weches outcrops of east Texas in San Augustine and Sabine counties. The Weches geologic formation consists of a layer of calcareous sediment, lying above a layer of glauconite clay deposited up to 50 million years ago. Erosion of this complex has produced topography of steep, flat-topped hills and escarpments, as well as the unique ecology of Weches glades: islands of thin, loamy, seepy, alkaline soils that support open-sun, herbaceous, and highly diverse and specialized plant communities.

Leavenworthia texana was historically recorded at eight sites, all in a narrow region along north San Augustine and Sabine Counties. All sites are on private land. Three sites have been lost to glauconite mining and two sites are currently closed to visitors. The Sabine County site supported 1000 plants within 9 square meters (97 square feet) in 2007. The Tiger Creek site in San Augustine County (less than 0.1 hectare (.2 acre) in size) was found to have about 200 plants in 2007. The Kardell site (less than 9 square meters (97 square feet)) has supported 400-500 plants in past years, but none in 2005. An introduced population in Nacogdoches County numbered about 1000 within an area of about 18 square meters (194 square feet) in 2007.

Historical habitat has been affected by highway construction, residential development, conversion to pasture and cropland, widespread use of herbicide, overgrazing, and glauconite mining. However, the primary threat to existing *Leavenworthia texana* populations is the invasion of nonnative and weedy shrubs and vines (primarily Macartney rose (*Rosa bracteata*) and Japanese honeysuckle (*Lonicera japonica*). All known sites are undergoing severe degradation by the incursion of nonnative shrubs and vines, which restrict both growth and reproduction of the gladecress. Brushclearing carried out in 1995 resulted in the reappearance of *L. texana* after a 10–year absence at one site. However, nonnative shrubs have again invaded this area. More effective control measures, such as burning and selective herbicide use, need to be tested and monitored. The small number of known sites also makes *L. texana* vulnerable to extreme natural disturbance events. A severe drought in 1999 and 2000 had a pronounced adverse effect on *L. texana* reproduction. Since the threat from nonnative plants severely affects all known sites, the magnitude is high. The threats are imminent since they are ongoing. Therefore, we retain an LPN of 2 for *L. texana*.

Lesquerella globosa (Desvaux) Watson (Short's bladderpod) – See above in ''*Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Linum arenicola (Sand flax) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Sand flax is found in pine rockland and marl prairie habitats which require

periodic wildfires in order to maintain an open, shrub free subcanopy and reduce leaf litter levels. Based upon available data, there are 11 extant occurrences of sand flax; 11 others are extirpated or destroyed. Only small and isolated occurrences remain in low-lying areas in a restricted range of southern Florida and the Florida Keys.

Habitat loss and degradation due to development is a major threat; most of the remaining occurrences are on private land or non-conservation public land. However, much of the pine rockland on Big Pine Key, the location of the largest occurrence, is protected from development. Climatic changes and sea-level rise are long-term threats that are expected to affect the species and ultimately reduce the extent of available habitat. Nearly all remaining populations are threatened by fire suppression, difficulty in applying prescribed fire, road maintenance activities, exotic species, or illegal dumping. However, some efforts are underway to use prescribed fire to control exotics on conservation lands where this species occurs. Sand flax is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Hurricane Wilma inundated most of its habitat on Big Pine Key in 2005, and plants were not found 8–9 weeks post-storm; the density of sand flax declined to zero in all management units at The Nature Conservancy's preserve in 2006. In a 2007 post-hurricane assessment, sand flax was found in northern plots, but not in any of the southern plots on Big Pine Key. Due to the small and fragmented nature of the current population, stochastic events, disease, or genetic bottlenecks may strongly affect this species. Reduced pollinator activity and suppression of pollinator populations from pesticides used in mosquito control and decreased seed production due to increased seed predation in a fragmented wildland urban interface may also affect sand flax; however, not enough information is known on this species' reproductive biology or life history to assess these potential threats. Overall, the magnitude of threats is high; most threats are ongoing and thus are imminent. Therefore, we assigned an LPN of 2 to this species.

Linum carteri var. *carteri* (Carter's small-flowered flax) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This plant occupies open and disturbed sites in pinelands of Miami-Dade County, Florida. Currently, there are 9 known occurrences. Occurrences with fewer than 100 individuals are located on 3 county-owned preserves. A site with more than 100 plants is owned by the U.S. government, but the site is not managed for conservation. Climatic changes and sea-level rise are long-term threats that will likely reduce the extent of habitat. The 9 existing occurrences are small and vulnerable to habitat loss, which is exacerbated by habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Remaining habitats are fragmented. Non-compatible management practices are also a threat at most protected sites; several sites are mowed during the flowering and fruiting season. The species is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. This species exists in such small numbers at so few sites, that it may be difficult to develop and maintain viable occurrences on the available conservation lands. Although no population viability analysis has been conducted for this plant, indications are that existing occurrences are at best marginal, and it is possible that none are truly viable. As a result, the magnitude of threats is high. The threats are ongoing, and thus are imminent. Therefore, we assigned an LPN of 3 to this plant variety.

Melicope christophersenii (Alani) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Melicope hiiakae (Alani) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Melicope makahae (Alani) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Myrsine fosbergii (Kolea) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Myrsine fosbergii* is a branched shrub or small tree found in cloud swept ridges and lowland mesic and wet forest on Kauai and Oahu, Hawaii. This species is currently known from 11 populations totaling approximately 58 individuals on Kauai and from 8 populations totaling between 73 and 83 individuals in the Koolau Mountains of Oahu. *Myrsine fosbergii* is threatened by feral pigs and goats that degrade and destroy habitat and may prey upon the plant, and nonnative plants that compete for light and nutrients. This species is represented in an *ex situ* collection. Although there are plans to fence and remove ungulates from the Helemano area of Oahu, which may benefit this species, no conservation measures have been taken to date to alleviate these threats for this species. Feral pigs and goats are found throughout the known range of *M. fosbergii*, as are nonnative plants. The threats from feral pigs, goats, and nonnative plants are of a high magnitude because they pose a severe threat throughout the limited range of this species, and they are ongoing and therefore imminent. We retained an LPN of 2 for this species.

Myrsine vaccinioides (Kolea) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Narthecium americanum (Bog asphodel) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Bog asphodel is a perennial herb that is found in savannah areas, usually with water moving through the substrate, as well as in sandy bogs along streams and rivers. The historical range of bog asphodel included New York, New Jersey, Delaware, North Carolina, and South Carolina, but it is now only found within the Pine Barrens region of New Jersey.

As an obligate wetland species, *N. americanum* is threatened by loss of habitat due to filling or draining of wetlands, changes in hydrology, and indirect impacts from development in adjacent uplands. The Pine Barrens savannahs that support bog asphodel provide a scarce, specialized habitat that has declined from several thousand acres around 1900 to only a thousand acres in recent decades. Within its savannah habitats, bog asphodel appears limited to a relatively narrow range of hydrologic and topographic conditions that make this species particularly sensitive to hydrologic changes, such as those resulting from filling or draining of wetlands, flooding as a result of reservoir construction, water extractions or diversions, and conversion of natural wetlands to commercial cranberry bogs.

Most bog asphodel occurs in New Jersey's regulated Pinelands Area, in which development of wetlands or uplands is prohibited unless designed to avoid irreversible adverse impacts upon the survival of any local populations of federally or State-listed plant or animal species. However, exemptions are granted for cranberry production and other agricultural uses, and illegal wetland filling has occurred. Outside the Pinelands Area, wetlands and wetland buffers are State-regulated, but many activities in uplands are not. Cumulative effects of upland development impact wetlands through sedimentation, non-point source pollution, changes in pH, and lowered water tables.

Of the known extant populations of bog asphodel, at least 55 occur on State-owned lands, 4 occur on federally owned lands, and at least 13 occur on private lands. Bog asphodel occurrences on public lands receive the highest levels of protection, but lack of enforcement regarding off-road vehicles is a problem on both public and private lands. Over-collection, as well as trampling, erosion, and siltation caused by recreational activities, may also affect some populations. Natural threats to bog asphodel at some sites include beaver-induced flooding, succession of savannahs to Atlantic white cedar swamps, and suppression of natural wildfires. The threats are moderate in magnitude since many occurrences receive some level of protection from some threats. The threats are imminent because conversion to cranberry bogs, natural succession, wildfire suppression, recreational impacts, and erosion are all ongoing. Overall, based on these imminent, moderate threats, we retain a listing priority number of 8 for this species.

Nothocestrum latifolium ('Aiea) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Aiea is a small tree found in dry to mesic forest and diverse mesic forests on Kauai, Oahu, Maui, Molokai, and Lanai, Hawaii. *Nothocestrum latifolium* is known from 20 steadily declining populations totaling fewer than 1,100 individuals. This species is threatened by feral pigs, goats, and axis deer that degrade and destroy habitat and may prey upon it; by nonnative plants that compete for light and nutrients; and by the loss of pollinators that negatively affect the reproductive viability of the species. This species is represented in an *ex situ* collection. Ungulates have been fenced out of some areas where *N. latifolium* currently occurs, and nonnative plants have been reduced in some populations that are fenced. However, these ongoing conservation efforts for this species benefit only a few of the known populations. The threats are not controlled and are ongoing in the remaining unfenced populations. In addition, little regeneration is observed in this species. The threats are of a high magnitude, since they are severe enough to affect the continued existence of the species. The threats are imminent, since they are ongoing. Therefore, we retained an LPN of 2 for this species.

Ochrosia haleakalae (Holei) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Holei is a tree found often on lava and in dry to mesic forest on the islands of Hawaii and Maui, Hawaii. This species is currently known from 11 populations totaling fewer than 130 individuals. *Ochrosia haleakalae* is threatened by fire; feral pigs, goats, and cattle that degrade and destroy habitat and may directly prey upon it; and nonnative plants that compete for light and nutrients. This species is represented in *ex situ* collections. Feral pigs, goats, and cattle have been fenced out of one wild and one outplanted population on private lands on the island of Maui and one outplanted population in Hawaii Volcanoes National Park on the island of Hawaii. Nonnative plants have been reduced in the fenced areas. The threat from fire is of a high magnitude and imminent because no control measures have been undertaken to address this threat that could adversely affect *O. haleakalae* as a whole. The threats from feral pigs, goats, and cattle are ongoing to the unfenced populations of *O. haleakalae*. The threat from nonnative plants is ongoing and imminent and of a high magnitude to the wild populations on both islands, and adversely affects the survival and reproductive capacity of the majority of the species. Therefore, we retained an LPN of 2 for this species.

Pediocactus peeblesianus var. *fickeiseniae* (Fickeisen plains cactus) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Fickeisen plains cactus is a small cactus known from the Gray Mountain vicinity to the Arizona strip in Coconino, Navajo, and Mohave counties, Arizona. The cactus grows on exposed layers of Kaibab limestone on canyon margins and well-drained hills in Navajoan desert or grassland. In 1999, the Arizona Game and Fish Department noted 23 occurrences for the species, including historical ones. The species is located on Bureau of Land Management (BLM), U.S. Forest Service, tribal, and possibly State lands. Recent reports from the BLM and Navajo Nation describe populations of the species as being in decline. The main human-induced threats to this cactus are activities associated with road maintenance, off-road vehicles, and trampling associated with livestock grazing. Monitoring data has detected mortality associated with livestock grazing. Illegal collection of this species has been noted in the past, but we do not know if it is a continuing threat. The populations that have been monitored have been affected, in part, by the continuing drought. There has been very low recruitment, and rabbits and rodents have consumed adult plants since there is reduced forage available during these dry conditions. Given that there are only a few known populations, that the range of this taxon is limited, and that the majority of the known populations on BLM lands and the Navajo Nation are experiencing declines, we conclude that the threats are of a high magnitude. The threats are ongoing and, therefore, are imminent. Thus, we have retained an LPN of 3 for this plant variety.

Penstemon debilis (Parachute beardtongue) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Penstemon scariosus var. *albifluvis* (White River beardtongue) - The following summary is based on information contained in our files and the petition we received on October 27, 1983. The White River beardtongue is restricted to calcareous soils derived from oil shale barrens of the Green River Formation in the Uinta Basin of northeastern Utah and adjacent Colorado. There are 14 occurrences known in Utah and 1 in Colorado. Most of the occupied habitat of the White River beardtongue is within developed and expanding oil and gas fields. The location of the species' habitat can expose it to destruction from road, pipeline, and well-site construction in connection with oil and gas development. Recreational off-road vehicle use, heavy grazing by livestock, and wildlife and livestock trampling are additional threats. A future threat and potentially the greatest threat to the species is oil shale development. The threats are of high magnitude because they involve habitat destruction that

could adversely affect the majority of the occurrences of this plant variety. The threats are nonimmient because threats associated with oil and gas and oil shale development will probably not be increasing substantially within the near future. Oil shale development remains uncertain within the species' habitat, and is not expected to be a significant factor in the near term. Therefore, based on current information, we retained an LPN of 6.

Peperomia subpetiolata ('Ala 'ala wai nui) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Phacelia submutica (DeBeque phacelia) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Phyllostegia bracteata (no common name) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Phyllostegia floribunda (no common name) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is an erect subshrub found in mesic to wet forest on the island of Hawaii, Hawaii. This species is known from 10 locations totaling fewer than 270 wild and outplanted individuals on State, private, and Federal lands. *Phyllostegia floribunda* is threatened by feral pigs that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. The National Park Service, The Nature Conservancy, and the State have outplanted more than 170 individuals at Olaa Forest Reserve, Kona Hema, and Waiakea Forest Reserve (more than 50, 20 individuals, and 100 individuals, respectively). Fences protect approximately five populations on private, State, and National Park lands. Nonnative plants have been reduced in these fenced areas. However, no conservation efforts have been implemented for the unfenced populations. This species is represented in *ex situ* collections. Overall, the threats are moderate because conservation efforts for over half of the populations reduce the severity of the threats. The threats are ongoing in the unfenced portions and must be constantly managed in the fenced portions. Therefore, the threats are imminent. We retained an LPN of 8 because the threats are of moderate magnitude and are imminent for the majority of the populations.

Physaria douglasii ssp. *tuplashensis* (White Bluffs bladder-pod) – See above in ''*Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Platanthera integrilabia (Correll) Leur (White fringeless orchid) – See above in ''*Listing Priority Changes in Candidates*.'' The above summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004.

Platydesma cornuta var. *cornuta* (no common name) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding.

Platydesma cornuta var. *decurrens* (no common name) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Platydesma remyi (no common name) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Platydesma remyi* is a shrub or shrubby tree found in wet forests on old volcanic slopes on the island of Hawaii, Hawaii. This species is known from two populations totaling fewer than 50 individuals. *Platydesma remyi* is threatened by feral pigs and cattle that degrade and destroy habitat, nonnative plants that compete for light and nutrients, reduced reproductive vigor, and stochastic extinction due to naturally occurring events. This species is represented in an *ex situ* collection, and by one individual included in a rare plant exclosure in the Laupahoehoe Natural Area Reserve. The threats are ongoing and therefore imminent, and of a high magnitude because of their severity; the threats cause direct mortality or significantly reduce the reproductive capacity of the species throughout its limited range. Therefore, we retained an LPN of 2 for this species.

Pleomele forbesii (Hala pepe) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Potentilla basaltica (Soldier Meadow cinquefoil or basalt cinquefoil) – The following summary is based on information contained in our files; the petition we received on May 11, 2004, provided no additional information on the species. *Potentilla basaltica* is a low growing, rhizomatous, herbaceous perennial that is associated with alkali meadows, seeps, and occasionally marsh habitats bordering perennial thermal springs, outflows, and meadow depressions. In Nevada, the species is known only from Soldier Meadow in Humboldt County. In northeastern California, a single population occurs in Lassen County. At Soldier Meadow, there are 11 discrete known occurrences within an area of about 24 acres (9.6 hectares) that support about 130,000 individuals. The California population occurs on private and public land and supports fewer than 1,000 plants. The public land has been designated as an Area of Critical Environmental Concern by the Bureau of Land Management.

The species and its habitat are threatened by recreational use as well as the impacts of past water diversions, livestock grazing, and off-road vehicle travel. Conservation measures implemented recently by the Bureau of Land Management in Nevada include the installation of fencing to exclude livestock, wild horses, burros, and other large mammals; the closure of access roads to spring, riparian, and wetland areas and the limiting of vehicles to designated routes; the establishment of a designated campground away from the habitats of sensitive species; the installation of educational signage; and an increased staff presence, including law enforcement and a volunteer site steward during the 6–month period of peak visitor use. In California, public land management actions include prohibiting livestock salting in the vicinity of springs, a proposed long-term monitoring plot, limitations on camping near springs, withdrawal from salable mineral leasing, and recommendations to withdrawal the land from mineral entry. These conservation measures have reduced the magnitude of threat to the species to moderate; all remaining threats are nonimminent and involve long-term changes to the habitat for the species resulting from past impacts.

Until a monitoring program is in place that allows us to assess the long-term trend of the species, we have assigned a LPN of 11.

Pseudognaphalium (*Gnaphalium) sandwicensium* var. *molokaiense* (Enaena) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Pseudognaphalium sandwicensium* var. *molokaiense* is a perennial herb found in strand vegetation in dry consolidated dunes on Molokai and Maui, Hawaii. This variety is known from five populations totaling approximately 10,000 to 20,000 individuals (depending upon rainfall) in the Moomomi area on the island of Molokai, and from two populations of a few individuals at Waiehu dunes and at Puu Kahulianapa on west Maui. *Pseudognaphalium sandwicensium* var. *molokaiense* is threatened by feral goats and axis deer that degrade and destroy habitat and possibly prey upon it, and by nonnative plants that compete for light and nutrients. Potential threats also include collection for lei and off-road vehicles that directly damage plants and degrade habitat. Weed control protects one population on Molokai; however, no conservation efforts have been initiated to date for the other populations on Molokai or for the individuals on Maui. This species is represented by an *ex situ* collection. The ongoing threats from axis deer, cattle, nonnative plants, collection, and off-road vehicles are of a high magnitude because no control measures have been undertaken for the Maui population and the threats result in direct mortality or significantly reduce reproductive capacity for the majority of the populations. Therefore, we retained an LPN of 3 for this plant variety.

Psychotria hexandra ssp. *oahuensis* var. *oahuensis* (Kopiko) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Pteralyxia macrocarpa (Kaulu) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Ranunculus hawaiensis (Makou) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ranunculus hawaiensis* is an erect or ascending perennial herb found in mesic to wet forest dominated by *Metrosideros polymorpha* and *Acacia koa* with scree substrate (loose stones or rocky debris on a slope) on Maui and the island of Hawaii, Hawaii. Populations formerly within Haleakala National Park have been extirpated. This species is currently known from fewer than 15 individuals in four populations: three wild populations occur on Hawaii totaling 11 individuals, and a Maui population (Kukui planeze) which was not relocated on a survey conducted in 2006. In addition, one wild population at Waikamoi (on Maui) was last observed in 1995. *Ranunculus hawaiensis* is threatened by direct predation by slugs, feral pigs, goats, cattle, mouflon, and sheep; by pigs, goats, cattle, mouflon and sheep that degrade and destroy habitat; and by nonnative plants that compete for light and nutrients. Three populations have been outplanted into protected exclosures; however, feral ungulates and nonnative plants are not controlled in the remaining, unfenced populations. In addition, the threat from introduced slugs is of a high magnitude because slugs occur throughout the limited range of this species and no effective measures have been undertaken to control them or prevent them from causing significant adverse impacts to this species. Overall, the threats from pigs, goats, cattle, mouflon, sheep, slugs, and nonnative plants are of a high magnitude, and ongoing (imminent) for *R. hawaiensis*. We retained an LPN of 2 for this species.

Ranunculus mauiensis (Makou) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ranunculus mauiensis* is an erect to weakly ascending perennial herb found in open sites in mesic to wet forest and along streams on the islands of Maui, Kauai, and Molokai, Hawaii. This species is currently known from 13 locations totaling fewer than 170 individuals. *Ranunculus mauiensis* is threatened by feral pigs, goats, mule deer and axis deer, and slugs that consume it; by habitat degradation and destruction by feral pigs, goats and deer; and by nonnative plants that compete for light and nutrients. This species is represented in *ex situ* collections. Feral pigs have been fenced out of the Maui populations of *R. mauiensis*, and nonnative plants have been reduced in the fenced areas. One individual occurs in the Kamakou Preserve on Molokai, managed by The Nature Conservancy. However, ongoing conservation efforts benefit only the Maui and Molokai individuals, and absent conservation efforts for the Kauai individuals, the threats continue to be of a high magnitude on Kauai. Therefore, since half of the individuals are found on Kauai, threats to the species overall are also of a high magnitude because these threats significantly reduce the reproductive capacity and thus, the survival of this species. In addition, the threats are imminent because they are ongoing in the Kauai and the majority of the Maui populations. Therefore, we retained an LPN of 2 for this species.

Rorippa subumbellata (Tahoe yellow cress) – The following summary is based on information contained in our files and the petition we received on December 27, 2000. *Rorippa subumbellata* is a small perennial herb known only from the shores of Lake Tahoe in California and Nevada. Data collected over the last 25 years generally indicate that species occurrence fluctuates yearly as a function of both lake level and the amount of exposed habitat. Records kept since 1900 show a preponderance of years with high lake levels that would isolate and reduce *R. subumbellata* occurrences at higher beach elevations. Less favorable peak years have occurred almost twice as often as more favorable low-level years. Annual surveys are conducted to determine population numbers, site occupancy, and general disturbance regime. During the 2003 and 2004 annual survey period, the lake level was approximately 6,224 ft (1,898 m); 2004 was the fourth consecutive year of low water. *Rorippa subumbellata* was present at 45 of the 72 sites surveyed (65 percent occupied), up from 15 sites (19 percent occupied) in 2000 when the lake level was high at 6,228 ft. Approximately 25,200 stems were counted or estimated in 2003, whereas during the 2000 annual survey, the estimated number of stems was 4,590. Lake levels began to rise again in 2005 and less habitat was available. Lake levels began to drop again in 2006 though 2008 leading to an increase in both occupied sites and estimated stem counts. Lake levels are expected to continue to drop in 2009.

Many *Rorippa subumbellata* sites are intensively used for commercial and public purposes and are subject to various activities such as erosion control, marina developments, pier construction, and recreation. The U.S. Forest Service, California Tahoe Conservancy, and California Department of Parks and Recreation have management programs for *R. subumbellata* that include monitoring, fenced enclosures, and transplanting

efforts when funds and staff are available. Public agencies (including the Service), private landowners, and environmental groups collaborated to develop a conservation strategy coupled with a Memorandum of Understanding/ Conservation Agreement. The conservation strategy, completed in 2003, contains goals and objectives for recovery and survival, a research and monitoring agenda, and serves as the foundation for an adaptive management program. Because of the continued commitments to conservation demonstrated by regulatory and land management agencies participating in the conservation strategy, we have determined the threats to *R. subumbellata* from various land uses have been reduced to a moderate magnitude. In high lake level years such as 2005, however, recreational use is concentrated within *R. subumbellata* habitat, and we consider this threat in particular to be ongoing and imminent. Therefore, we have maintained an LPN of 8 for this species.

Schiedea pubescens (Maolioli) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Schiedea pubescens* is a reclining or weakly climbing vine found in diverse mesic to wet forest on Maui, Molokai, and Hawaii. Currently, this species is known from six populations totaling between 29 and 71 individuals on Maui, from four populations totaling 25 individuals on Molokai, and from one population of 4 to 6 individuals on the island of Hawaii. *Schiedea pubescens* is threatened by feral pigs and goats that consume it and degrade and destroy habitat, and by nonnative plants that compete for light and nutrients. Feral ungulates have been fenced out of the population of *S. pubescens* on Hawaii. Feral goats have been fenced out of a few of the west Maui populations of *S. pubescens*. Nonnative plants have been reduced in the populations that are fenced on Maui. However, the threats are not controlled and are ongoing in the remaining unfenced populations on Maui and the three populations on Molokai. Fire is a potential threat to the Hawaii Island population. In light of the extremely low number of individuals of this species, the threats from goats and nonnative plants are of a high magnitude because they result in mortaility and reduced reproductive capacity for the majority of the populations. The threats are imminent because they are ongoing with respect to most of the populations. Therefore, we retained an LPN of 2 for this species.

Schiedea salicaria (no common name) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Sedum eastwoodiae (Red Mountain stonecrop) – The following summary is based on information contained in our files and information provided by the California Department of Fish and Game. The petition we received on May 11, 2004 provided no new information on the species. Red Mountain stonecrop is a perennial succulent which occupies relatively barren, rocky openings and cliffs in lower montane coniferous forests, between 1,900 and 4,000 feet elevation. Its distribution is limited to Red Mountain, Mendocino County, California, where it occupies in excess of 54 acres scattered over 4 square miles. Total population size has not been determined, but a preliminary estimate suggests the population may be in excess of 29,000 plants, occupying more 27 discrete habitat polygons. Intensive monitoring suggests considerable annual variation in plant seedling success and inflorescence production. The primary threat to the species is the potential for surface mining for chromium and nickel. The entire distribution Red Mountain stonecrop is either owned by mining interests, or is covered by mining claims, none of which are currently active. Surface mining would destroy habitat suitability for this species. The species is also believed threatened by tree and shrub encroachment into its habitat, in the absence of fire. Some 25 percent of its known distribution occurred within the boundary of the Red Mountain Fire of June 2008. However, the extent and manner in which Red Mountain stonecrop and its habitat were affected by that fire is not yet known. Given the high magnitude and nonimminent threats to the small, scattered populations of this plant species, we assigned an LPN of 5 to Red Mountain stonecrop.

Sicyos macrophyllus (ʻAnunu) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Sicyos macrophyllus* is a perennial vine found in wet *Metrosideros polymorpha* (ohia) forest and subalpine *Sophora chrysophylla-Myoporum sandwicense* (mamane-naio) forest on the island of Hawaii, Hawaii. This species is known from 11 populations totaling fewer than 50 individuals in the Kohala and Mauna Kea areas and in Hawaii Volcanoes National Park (Puna area) on the island of Hawaii. It appears that a naturally occurring population at Kipuka Ki in Hawaii Volcanoes National Park is reproducing by seeds, but seeds have not been successfully germinated under nursery conditions. This species is threatened by feral pigs, cattle, and mouflon sheep that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. This species is represented in *ex situ* collections. Feral pigs have been fenced out of some of the areas where *S. macrophyllus* currently occurs, but the fences do not exclude sheep. Nonnative plants have been reduced in the populations that are fenced. However, the threats are not controlled and are ongoing in the remaining, unfenced populations, and are, therefore, imminent. Similarly the threat from sheep is ongoing and imminent in all populations, because the current fences do not exclude sheep. In addition, all of the threats are of a high magnitude because habitat degradation and competition from nonnative plants present a risk to the species, resulting in direct mortality or significantly reducing the reproductive capacity. Therefore, we retained an LPN of 2 for this species.

Solanum nelsonii (popolo) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Solanum nelsonii* is a sprawling or trailing shrub found in coral rubble or sand in coastal sites. This species is known from populations in Molokai (approximately 300 plants), the island of Hawaii (5 plants), and the northwestern Hawaiian Islands (NWHI): The current populations in the NWHI are found on: Midway (approximately 260 plants), Laysan (approximately 490 plants), Pearl and Hermes (unknown number of individuals), Nihoa (8,000 to 15,000 adult plants). On Molokai, *S. nelsonii* is moderately threatened by ungulates that degrade and destroy habitat, and may eat *S. nelsonii*. On Molokai and the northwestern Hawaiian Islands this species is threatened by nonnative plants that outcompete and displace it, and by predation by a nonnative grasshopper. This species is represented in *ex situ* collections. Ungulate exclusion fences, routine fence monitoring and maintenance, and weed control protect the population of *S. nelsonii* on Molokai. Limited weed control is conducted in the northwestern Hawaiian Islands. These threats are of moderate magnitude because of the relatively large number of

plants, and are imminent for the majority of the populations because they are ongoing and are not being controlled. We therefore retained an LPN of 8 for this species.

Stenogyne cranwelliae (no common name) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Stenogyne cranwelliae* is a creeping vine found in wet forest dominated by *Metrosideros polymorpha* on the island of Hawaii, Hawaii. *Stenogyne cranwelliae* is known from 11 populations totaling fewer than 100 individuals. This species is threatened by feral pigs that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. In addition, this species is potentially threatened by rats that may directly prey upon it, and by randomly occurring natural events such as hurricanes and landslides. This species is represented in an *ex situ* collection. All of the threats are ongoing rangewide, and no efforts for control or eradication are being undertaken for the pigs, nonnative plants, or rats. These threats significantly affect the entire species particularly in light of its small population size. We retained an LPN of 2 because these imminent threats are of a high magnitude.

Symphyotrichum georgianum (Georgia aster) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Georgia aster currently occurs in the states of Alabama, Georgia, North Carolina and South Carolina. The species is presumed extant in three counties in Alabama, ten counties in Georgia, nine counties in North Carolina, and eleven counties in South Carolina. The species appears to have been eliminated from Florida.

Georgia aster is a relict species of post oak savannah/prairie communities that existed in the southeast prior to widespread fire suppression and extirpation of large native grazing animals. Most remaining populations survive adjacent to roads, utility rights of way, and other openings where current land management mimics natural disturbance regimes. Most populations are small (10-100 stems), and since the species' main mode of reproduction is vegetative, each isolated population may represent only a few genotypes. Many populations are threatened by one or more of the following factors: woody succession due to fire suppression, development, highway expansion/improvement, and herbicide application. The threats described above are currently occurring and are therefore, imminent. These threats are expected to operate throughout the range of the species; however data on the frequency, timing, and consequences of these threats are lacking. Based upon data on other rare plant species, some of which are federally listed, occurring in similar habitats and possessing similar life histories, we do not currently expect that these threats are likely to be irreversible (e.g., to result in the extirpation of populations) in the near future. Therefore, the magnitude of threats is moderate to low. Thus we assigned an LPN of 8 to this species.

Zanthoxylum oahuense (Ae) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Ferns and Allies

Christella boydiae (no common name) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is a small- to medium-sized fern found in mesic to wet forest along streambanks on Oahu and Maui, Hawaii. Historically, this species was also found on the island of Hawaii, but it has been extirpated there. Currently, this species is known from five populations totaling 316 individuals. This species is threatened by feral pigs that degrade and destroy habitat and may eat this plant, nonnative plants that compete for light and nutrients, and stream diversion. Feral pigs have been fenced out of the largest population on Maui, and nonnative plants have been reduced in the fenced area. No conservation efforts are under way to alleviate threats to the other two populations on Maui, or for the two populations on Oahu. This species is represented in an *ex situ* collection. The magnitude of the threats acting upon the currently extant populations is moderate because the largest population is protected from pigs, and nonnative plants have been reduced in this area. The threats are ongoing and therefore imminent. Therefore, we retained an LPN of 8 for this species.

Doryopteris takeuchii (no common name) – We continue to find that listing this species is warranted-but-precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12–month finding.

Huperzia stemmermanniae (Waewaeiole) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is an epiphytic pendant clubmoss found in mesic to wet *Metrosideros polymorpha-Acacia koa* (ohia-koa) forests on the islands of Maui and Hawaii, Hawaii. Only four populations are known, totaling 19 to 29 individuals on Hawaii and Maui. *Huperzia stemmermanniae* is threatened by feral pigs, goats, cattle, and deer that degrade and destroy habitat, and by nonnative plants that compete for light, space, and nutrients. It is also threatened by randomly occurring natural events due to its small population size. One individual at Waikamoi Preserve may benefit from fencing for deer and pigs. This species is represented in *ex situ* collections. The threats from pigs, goats, cattle, deer, and nonnative plants are of a high magnitude because they are sufficiently severe to adversely affect the species throughout its limited range, resulting in direct mortality or significantly reducing reproductive capacity. The threats are imminent because they are ongoing. Therefore, we retained an LPN of 2 for this species.

Microlepia strigosa var. *mauiensis* (Palapalai) – The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Palapalai is a terrestrial fern found in mesic to wet forests. It is currently found on the islands of Maui, Hawaii, and Oahu, from at least 10 populations totaling at least 46 individuals. There is a possibility that the range of this plant variety could be larger and include the other main Hawaiian Islands. *Microlepia strigosa* var. *mauiensis* is threatened by feral pigs that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. Pigs have been fenced out of areas on east and west Maui, and on Hawaii, where *M. strigosa* var. *mauiensis* currently occurs, and nonnative plants have been reduced in the fenced areas. However, the threats are not controlled and are ongoing in the remaining unfenced populations on Maui, Hawaii, and Oahu. Therefore, the threats from feral pigs and nonnative plants are imminent. The threats are of a high magnitude because they are sufficiently severe to adversely affect the species throughout its range, resulting in direct mortality or significantly reducing reproductive

capacity. We therefore retained an LPN of 3 for *M. strigosa* var. *mauiensis*.

Petitions To Reclassify Species Already Listed

We previously made warranted-but-precluded findings on six petitions seeking to reclassify threatened species to endangered status. The taxa involved are three populations of the grizzly bear (*Ursus arctos horribilis*), the spikedace (*Meda fulgida*), the loach minnow (*Tiaroga cobitis*), and *Sclerocactus brevispinus* (Pariette cactus). Because these species are already listed under the Act, they are not candidates for listing and are not included in Table 1. However, this notice and associated species assessment forms also constitute the resubmitted petition findings for these species. For the three grizzly bear populations, we have not updated the information in our assessments through this notice as explained below. Although, we are completing an ongoing review of the status of the grizzly bear in the lower 48 States outside of the Greater Yellowstone Areas (see below), we continue to find that reclassification to endangered for each of the three populations (described below) is warranted but precluded by work indentified above (see ''*Petition Findings for Candidate Species*''). For the spikedace, loach minnow, and *Sclerocactus brevispinus*, our updated assessments are provided below. We find that reclassification to endangered status for the spikedace, loach minnow, and *Sclerocactus brevispinus* is currently warranted but precluded by work identified above (see ''*Petition Findings for Candidate Species*''). One of the primary reasons that the work identified above is considered higher priority is that the grizzly bear populations, spikedace, loach minnow, and *Sclerocactus brevispinus* are currently listed as threatened, and therefore already receive certain protections under the Act. The Service promulgated regulations extending take prohibitions for endangered species under section 9 to threatened species (50 CFR 17.31). Prohibited actions under section 9 include, but are not limited to, take (i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such activity). For plants, prohibited actions under section 9 include removing or reducing to possession any listed plant from an area under Federal jurisdiction (50 CFR 17.61). Other protections include those under section 7(a)(2) of the Act whereby Federal agencies must insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species.

Grizzly bear (*Ursus arctos horribilis*) North Cascades ecosystem, Cabinet-Yaak, and Selkirk populations (Region 6) – We have not updated the information in our uplisting findings with regard to the grizzly bear (*Ursus arctos horribilis*) populations in the North Cascade, the Cabinet-Yaak, or the Selkirk Ecosystems in this notice. Between 1991 and 1999, we issued warranted-but-precluded findings to reclassify grizzly bears as endangered in the North Cascades (56 FR 33892–33894, July 24, 1991; 63 FR 30453–30454, June 4, 1998), the Cabinet-Yaak (58 FR 8250–8251, February 12, 1993; 64 FR 26725-26733, May 17, 1999), and the Selkirk Ecosystems (64 FR 26725–26733, May 17, 1999). However, none of these findings included a formal analysis under our 1996 Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS) under the Endangered Species Act (61 FR 4722-4725, February 7, 1996). Under this policy a formal analysis of discreteness and significance is necessary to determine if the petitioned entity is a ''listable entity'' and, therefore, if the petitioned action remains warranted-but-precluded. While our 1999 revised 12-month finding included a preliminary DPS analysis, it appears to have incorrectly analyzed significance to the listed entity (i.e., grizzly bears in the lower 48 States) instead of significance to the taxon (*Ursus arctos horribilis*) as required by our DPS policy (64 FR 26725–26733, May 17, 1999; 61 FR 4722-4725, February 7, 1996; *National Association of Home Builders* v. *Norton*, 340 F. 3d 835, 852 (9th Cir. 2003)). Additionally, emerging biological information now suggests increasing levels of connectivity among some of these populations casting doubt on their discreteness.

Also relevant is the March 16, 2007, Department of the Interior Office of the Solicitor memorandum (available at: *http://www.doi.gov/solicitor/M37013.pdf*) regarding the meaning of ''significant portion of [a species] range.'' This memorandum states that ''whenever the Secretary concludes because of the statutory five-factor analysis that a species is 'in danger of extinction throughout... a significant portion of its range,' it is to be listed and the protections of the ESA applied to the species in that portion of its range.'' The memorandum goes on to say ''the Secretary has broad discretion in defining what portion of a range is 'significant.' '' To date, the Service has not determined whether the North Cascade, the Cabinet-Yaak, or the Selkirk Ecosystems constitute a significant portion of the grizzly bear's range.

On April 18, 2007, the Service initiated a 5-year review to evaluate the current status of grizzly bears in the lower 48 States outside of the Greater Yellowstone Area (72 FR 19549-19551). This status review will fully evaluate the status of each population and determine if any of the populations warrant endangered status. We expect this 5-year review to be completed in late 2009.

Spikedace (*Meda fulgida*) (Region 2) (see 59 FR 35303, July 11, 1994, and the species assessment form (see **ADDRESSES**) for additional information on why reclassification to endangered is warranted-but-precluded) – The spikedace, a small fish species in a monotypic genus, is found in moderate-to-large perennial waters, where it inhabits shallow shear zones, sheet flow, and eddies with sand, gravel, and rubble substrates, and moderate-to-swift currents and swift pools over sand or gravel substrates. This species is now common only in Aravaipa Creek and portions of the upper Gila River in New Mexico. Smaller, less stable populations occur in some areas of the upper Gila, and possibly the Verde River. Spikedace have been translocated into Hot Springs and Redfield Canyon (San Pedro River tributaries), Fossil Creek (Verde River tributary), Bonita Creek (Gila River tributary), and the San Francisco River (in New Mexico). Should these populations become self-sustaining, they will ultimately contribute to species recovery.

The threats to this species are primarily from nonnative aquatic species and water withdrawals, including groundwater pumping. Other threats include improper livestock grazing, road construction, and recreation. Spikedace occur in only 5 to 10 percent of their historical range, and threats occur over the majority of their range, to varying degrees. Threats are exacerbated by ongoing drought. In addition, different threats can interact with each other to further cause decline. For example, drought and water withdrawals may decrease the amount of habitat available to all species within a given stream, forcing natives and nonnatives into closer proximity to one another. Effects from nonnative species introductions are permanent, unless streams are actively renovated and/or barriers installed to preclude further recolonization by nonnatives. Grazing pressures have eased as Federal agencies remove cattle from streams directly, but upland conditions continue

to affect watersheds in general. Groundwater withdrawals or exchanges that affect streamflow are not reversible. For these reasons, the magnitude of the threat to this species is high. In addition, most of the threats to this species are already ongoing, in particular grazing, water withdrawals, nonnative stocking programs, recreational use, and drought. Because threats have gone on for many years in the past, are associated with irreversible commitments (i.e., water exchanges), or are not easily reversed (i.e., nonnative stocking and impacts from grazing), the threats to the species are imminent. Therefore, we assigned this species an LPN of 1 for uplisting to endangered.

Loach minnow (*Tiaroga cobitis*) (Region 2) (see 59 FR 35303, July 11, 1994, and the species assessment form (see **ADDRESSES**) for additional information on why reclassification to endangered is warranted-but-precluded) – This small fish, the only species within the genus, is found in small-to-large perennial streams and uses shallow, turbulent riffles with primarily cobble substrate and swift currents. This species is now common only in Aravaipa Creek and the Blue River in Arizona, and in limited portions of the San Francisco, upper Gila, and Tularosa rivers in New Mexico. Smaller, less stable populations occur in some areas of the upper Gila, such as the Middle Fork and in small areas of several tributary streams to Aravaipa Creek and the Blue and Tularosa rivers, such as Pace, Frieborn, and Negrito creeks. Small populations are also present in Eagle Creek and the Black River. Loach minnow have been translocated into Hot Springs and Redfield Canyon (San Pedro River tributaries), Fossil Creek (Verde River tributary), and Bonita Creek (Gila River tributary). Should these populations become self-sustaining, they will ultimately contribute to species' recovery.

The threats to this species are primarily from nonnative aquatic species and water withdrawals, including groundwater pumping. Other threats include improper livestock grazing, road construction, and recreation. Loach minnow occur in only 10 to 15 percent of their historical range, and threats occur over the majority of their range, to varying degrees. Threats are exacerbated by ongoing drought. In addition, different threats can interact with each other to further cause decline. For example, drought and water withdrawals may decrease the amount of habitat available to all species within a given stream, bringing natives and nonnatives into closer contact. Effects from nonnative species introductions are permanent, unless streams are actively renovated and/or barriers installed to preclude further recolonization by nonnatives. Grazing pressures have eased as Federal agencies remove cattle from streams directly, but upland conditions continue to affect watersheds in general. Groundwater withdrawals or exchanges that affect streamflow are not reversible. For these reasons, the magnitude of the threats to this species is high. In addition, most of the threats to this species are already ongoing, in particular grazing, water withdrawals, nonnative stocking programs, recreational use, and drought. Because threats have gone on for many years in the past, are associated with irreversible commitments (i.e., water exchanges), or are not easily reversed (i.e., nonnative stocking and impacts from grazing), the threats to this species are imminent. Therefore, we assigned this species an LPN of 1 for uplisting to endangered.

Sclerocactus brevispinus (Pariette cactus) (Region 6) (see 72 FR 53211, September 18, 2007, and the species assessment form (see **ADDRESSES**) for additional information on why reclassification to endangered is warranted-but-precluded) – The Pariette cactus is restricted to clay bad-lands of the Wagon Hound member of the Uinta Formation in the Uinta Basin of northeastern Utah. The species is restricted to one population with an overall range of approximately 10 miles by 5 miles in extent. The species' entire population is within a developed and expanding oil and gas field. The location of the species' habitat exposes it to destruction from road, pipeline, and well-site construction in connection with oil and gas development. The species is collected as a specimen plant for horticultural use. Recreational off-road vehicle use and livestock trampling are additional threats. The species is currently federally listed as threatened by its previous inclusion within the species *Sclerocactus glaucus*. The ongoing threats are of a high magnitude since any one of the threats has the potential to severely affect this species because it is a narrow endemic species with a highly limited range and distribution. Thus, we assigned this species an LPN of 2 for uplisting to endangered.

Current Notice of Review

We gather data on plants and animals native to the U.S. that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants. This notice identifies those species that we currently regard as candidates for addition to the Lists. These candidates include species and subspecies of fish, wildlife, or plants and DPSs of vertebrate animals. This compilation relies on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies, knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 list animals arranged alphabetically by common names under the major group headings, and list plants alphabetically by names of genera, species, and relevant subspecies and varieties. Animals are grouped by class or order. Plants are subdivided into two groups: (1) flowering plants and (2) ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses with the synonyms preceded by an ''equals'' sign. Several species that have not yet been formally described in the scientific literature are included; such species are identified by a generic or specific name (in italics), followed by ''sp.'' or ''ssp.'' We incorporate standardized common names in these notices as they become available. We sort plants by scientific name due to the inconsistencies in common names, the inclusion of vernacular and composite subspecific names, and the fact that many plants still lack a standardized common name.

Table 1 lists all candidate species, plus species currently proposed for listing under the Act. We emphasize that in this notice we are not proposing to list any of the candidate species; rather, we will develop and publish proposed listing rules for these species in the future. We encourage State agencies, other Federal agencies, and other parties to give consideration to these species in environmental planning.

In Table 1, the ''category'' column on the left side of the table identifies the status of each species according to the following codes:

PE - Species proposed for listing as endangered. Proposed species are those species for which we have published a proposed rule to list as endangered or threatened in the **Federal Register**. This category does not include species for which we have withdrawn or finalized the proposed rule.

PT - Species proposed for listing as threatened.

PSAT – Species proposed for listing as threatened due to similarity of appearance.

C - Candidates: Species for which we have on file sufficient information on biological vulnerability and threats to

support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded at present by other higher priority listing actions. This category includes species for which we made a 12–month warranted-but-precluded finding on a petition to list. We made new findings on all petitions for which we previously made ''warranted-but-precluded'' findings. We identify the species for which we made a continued warranted-but-precluded finding on a resubmitted petition by the code ''C*'' in the category column (see ''Findings for Petitioned Candidate Species'' section for additional information).

The ''Priority'' column indicates the LPN for each candidate species which we use to determine the most appropriate use of our available resources. The lowest numbers have the highest priority. We assign LPNs based on the immediacy and magnitude of threats as well as on taxonomic status. We published a complete description of our listing priority system in the **Federal Register** (48 FR 43098, September 21, 1983).

The third column, ''Lead Region,'' identifies the Regional Office to which you should direct information, comments, or questions (see addresses under **Request for Information** at the end of the **SUPPLEMENTARY INFORMATION** section).

Following the scientific name (fourth column) and the family designation (fifth column) is the common name (sixth column). The seventh column provides the known historical range for the species or vertebrate population (for vertebrate populations, this is the historical range for the entire species or subspecies and not just the historical range for the distinct population segment), indicated by postal code abbreviations for States and U.S. territories. Many species no longer occur in all of the areas listed.

Species in Table 2 of this notice are those we included either as proposed species or as candidates in the previous CNOR (published December 10, 2008) that are no longer proposed species or candidates for listing. Since December 10, 2008, we listed one species and removed four species from candidate status for the reasons indicated by the codes. The first column indicates the present status of each species, using the following codes (not all of these codes may have been used in this CNOR):

E - Species we listed as endangered.

T - Species we listed as threatened.

Rc - Species we removed from the candidate list because currently available information does not support a proposed listing.

Rp - Species we removed from the candidate list because we have withdrawn the proposed listing.

The second column indicates why we no longer regard the species as a candidate or proposed species using the following codes (not all of these codes may have been used in this CNOR):

A - Species that are more abundant or widespread than previously believed and species that are not subject to the degree of threats sufficient to warrant continuing candidate status, or issuing a proposed or final listing.

F - Species whose range no longer includes a U.S. territory.

I - Species for which we have insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list.

L - Species we added to the Lists of Endangered and Threatened Wildlife and Plants.

M - Species we mistakenly included as candidates or proposed species in the last notice of review.

N - Species that are not listable entities based on the Act's definition of ''species'' and current taxonomic understanding.

U - Species that are not subject to the degree of threats sufficient to warrant issuance of a proposed listing or continuance of candidate status due, in part or totally, to conservation efforts that remove or reduce the threats to the species.

X - Species we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historical range include information as previously described for Table 1.

Request for Information

We request you submit any further information on the species named in this notice as soon as possible or whenever it becomes available. We are particularly interested in any information:

(1) indicating that we should add a species to the list of candidate species;

(2) indicating that we should remove a species from candidate status;

(3) recommending areas that we should designate as critical habitat for a species, or indicating that designation of critical habitat would not be prudent for a species;

(4) documenting threats to any of the included species;

(5) describing the immediacy or magnitude of threats facing candidate species;

(6) pointing out taxonomic or nomenclature changes for any of the species;

(7) suggesting appropriate common names; and

(8) noting any mistakes, such as errors in the indicated historical ranges.

Submit information, materials, or comments regarding a particular species to the Regional Director of the Region identified as having the lead responsibility for that species. The regional addresses follow:

Region 1. Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands. Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232-4181 (503/231-6158).

Region 2. Arizona, New Mexico, Oklahoma, and Texas. Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, NM 87102 (505/248-6920).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Director (TE), U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, MN 55111-4056 (612/713-5334).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands. Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (404/679-4156).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035-9589 (413/253-8615).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225-0486 (303/236-7400).

Region 7. Alaska. Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503-6199 (907/786-3505).

Region 8. California and Nevada. Regional Director (TE), U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W2606, Sacramento, CA 95825 (916/414-6464)

We will provide information received in response to the previous CNOR to the Region having lead responsibility for each candidate species mentioned in the submission. We will likewise consider all information provided in response to this CNOR in deciding whether to propose species for listing and when to

undertake necessary listing actions (including whether emergency listing pursuant to section 4(b)(7) of the Act is appropriate). Information and comments we receive will become part of the administrative record for the species, which we maintain at the appropriate Regional Office.

Before including your address, phone number, e-mail address, or other personal identifying information in your submission, be advised that your entire submission – including your personal identifying information – may be made publicly available at any time. Although you can ask us in your submission to withhold from public review your personal indentifying information, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: October 29, 2009

Christine E. Eustis

Acting Director, Fish and Wildlife Service

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
MAMMALS						
C	2	R4	*Eumops floridanus*	Molossidae	Bat, Florida bonneted	U.S.A. (FL)
C*	3	R1	*Emballonura semicaudata rotensis*	Emballonuridae	Bat, Pacific sheath-tailed (Mariana Islands subspecies)	U.S.A. (GU, CNMI)
C*	3	R1	*Emballonura semicaudata semicaudata*	Emballonuridae	Bat, Pacific sheath-tailed (American Samoa DPS)	U.S.A. (AS), Fiji, Independent Samoa, Tonga, Vanuatu
C*	2	R5	*Sylvilagus transitionalis*	Leporidae	Cottontail, New England	U.S.A. (CT, MA, ME, NH, NY, RI, VT)
C*	6	R8	*Martes pennanti*	Mustelidae	Fisher (west coast DPS)	U.S.A. (CA, CT, IA, ID, IL, IN, KY, MA, MD,ME, MI, MN, MT, ND, NH, NJ, NY, OH, OR, PA, RI, TN, UT, VA, VT, WA, WI, WV, WY), Canada
C*	3	R2	*Zapus hudsonius luteus*	Zapodidae	Mouse, New Mexico meadow jumping	U.S.A. (AZ, CO, NM)
C*	3	R1	*Thomomys mazama* couchi	Geomyidae	Pocket gopher, Shelton	U.S.A. (WA)
C	3	R1	*Thomomys mazama douglasii*	Geomyidae	Pocket gopher, Brush Prairie	U.S.A. (WA)
C*	3	R1	*Thomomys mazama glacialis*	Geomyidae	Pocket gopher, Roy Prairie	U.S.A. (WA)
C*	3	R1	*Thomomys mazama louiei*	Geomyidae	Pocket gopher, Cathlamet	U.S.A. (WA)
C*	3	R1	*Thomomys mazama melanops*	Geomyidae	Pocket gopher, Olympic	U.S.A. (WA)
C*	3	R1	*Thomomys mazama pugetensis*	Geomyidae	Pocket gopher, Olympia	U.S.A. (WA)
C*	3	R1	*Thomomys mazama tacomensis*	Geomyidae	Pocket gopher, Tacoma	U.S.A. (WA)
C*	3	R1	*Thomomys mazama tumuli*	Geomyidae	Pocket gopher, Tenino	U.S.A. (WA)
C*	3	R1	*Thomomys mazama yelmensis*	Geomyidae	Pocket gopher, Yelm	U.S.A. (WA)

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	3	R6	*Cynomys gunnisoni*	Sciuridae	Prairie dog, Gunnison's (central and south-central Colorado, north-central New Mexico SPR)	U.S.A. (CO, NM)
C*	3	R8	*Spermophilus tereticaudus chlorus*	Sciuridae	Squirrel, Palm Springs (= Coachella Valley) round-tailed ground	U.S.A. (CA)
C*	9	R1	*Spermophilus brunneus endemicus*	Sciuridae	Squirrel, Southern Idaho ground	U.S.A. (ID)
C*	5	R1	*Spermophilus washingtoni*	Sciuridae	Squirrel, Washington ground	U.S.A. (WA, OR)
BIRDS						
PE	–	R1	*Loxops caeruleirostris*	Fringillidae	Akekee (honeycreeper)	U.S.A. (HI)
PE	2	R1	*Oreomystis bairdi*	Fringillidae	Akikiki (Kauai creeper)	U.S.A. (HI)
C*	3	R1	*Porzana tabuensis*	Rallidae	Crake, spotless (American Samoa DPS)	U.S.A. (AS), Australia, Fiji, Independent Samoa, Marquesas, Philippines, Society Islands, Tonga
C*	3	R8	*Coccyzus americanus*	Cuculidae	Cuckoo, yellow-billed (Western U.S. DPS)	U.S.A. (Lower 48 States), Canada, Mexico, Central and South America
C*	9	R1	*Gallicolumba stairi*	Columbidae	Ground-dove, friendly (American Samoa DPS)	U.S.A. (AS), Independent Samoa
C*	3	R1	*Eremophila alpestris strigata*	Alaudidae	Horned lark, streaked	U.S.A. (OR, WA), Canada (BC)
C*	3	R5	*Calidris canutus rufa*	Scolopacidae	Knot, red	U.S.A. (Atlantic coast), Canada, South America
C*	8	R7	*Gavia adamsii*	Gaviidae	Loon, yellow-billed	U.S.A. (AK), Canada, Norway, Russia, coastal waters of southern Pacific and North Sea
C*	2	R7	*Brachyramphus brevirostris*	Alcidae	Murrelet, Kittlitz's	U.S.A. (AK), Russia.
C*	5	R8	*Synthliboramphus hypoleucus*	Alcidae	Murrelet, Xantus's	U.S.A. (CA), Mexico
C*	2	R2	*Tympanuchus pallidicinctus*	Phasianidae	Prairie-chicken, lesser	U.S.A. (CO, KA, NM, OK, TX)

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	6	R1	*Centrocercus urophasianus*	Phasianidae	Sage-grouse, greater (Columbia Basin DPS)	U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK)
C*	3	R1	*Oceanodroma castro*	Hydrobatidae	Storm-petrel, band-rumped (Hawaii DPS)	U.S.A. (HI), Atlantic Ocean, Ecuador (Galapagos Islands), Japan
C*	11	R4	*Dendroica angelae*	Emberizidae	Warbler, elfin-woods	U.S.A. (PR)
REPTILES						
C*	3	R2	*Thamnophis eques megalops*	Colubridae	Gartersnake, northern Mexican	U.S.A. (AZ, NM, NV), Mexico
C*	2	R2	*Sceloporus arenicolus*	Iguanidae	Lizard, sand dune	U.S.A. (TX, NM)
C*	9	R3	*Sistrurus catenatus catenatus*	Viperidae	Massasauga (=rattlesnake), eastern	U.S.A. (IA, IL, IN, MI, MO, MN, NY, OH, PA, WI), Canada
C*	3	R4	*Pituophis melanoleucus lodingi*	Colubridae	Snake, black pine	U.S.A. (AL, LA, MS)
C*	5	R4	*Pituophis ruthveni*	Colubridae	Snake, Louisiana pine	U.S.A. (LA, TX)
C*	3	R2	*Kinosternon sonoriense longifemorale*	Kinosternidae	Turtle, Sonoyta mud	U.S.A. (AZ), Mexico
AMPHIBIANS						
C*	9	R8	*Rana luteiventris*	Ranidae	Frog, Columbia spotted (Great Basin DPS)	U.S.A. (AK, ID, MT, NV, OR, UT, WA, WY), Canada (BC)
C*	3	R8	*Rana muscosa*	Ranidae	Frog, mountain yellow-legged (Sierra Nevada DPS)	U.S.A (CA, NV)
C*	2	R1	*Rana pretiosa*	Ranidae	Frog, Oregon spotted	U.S.A. (CA, OR, WA), Canada (BC)
C*	11	R8	*Rana onca*	Ranidae	Frog, relict leopard	U.S.A. (AZ, NV, UT)
C*	3	R3	*Cryptobranchus alleganiensis bishopi*	Crytobranchidae	Hellbender, Ozark	U.S.A. (AR, MO)
C*	2	R2	*Eurycea waterlooensis*	Plethodontidae	Salamander, Austin blind	U.S.A. (TX)
C*	8	R2	*Eurycea naufragia*	Plethodontidae	Salamander, Georgetown	U.S.A. (TX)
C*	8	R2	*Eurycea tonkawae*	Plethodontidae	Salamander, Jollyville Plateau	U.S.A. (TX)
C*	2	R2	*Eurycea chisholmensis*	Plethodontidae	Salamander, Salado	U.S.A. (TX)
C*	11	R8	*Bufo canorus*	Bufonidae	Toad, Yosemite	U.S.A. (CA)

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C	3	R2	*Hyla wrightorum*	Hylidae	Treefrog, Arizona (Huachuca/Canelo DPS)	U.S.A. (AZ), Mexico (Sonora)
C*	8	R4	*Necturus alabamensis*	Proteidae	Waterdog, black warrior (=Sipsey Fork)	U.S.A. (AL)
FISHES						
C*	8	R2	*Gila nigra*	Cyprinidae	Chub, headwater	U.S.A. (AZ, NM)
C*	9	R2	*Gila robusta*	Cyprinidae	Chub, roundtail (Lower Colorado River Basin DPS)	U.S.A. (AZ, CO, NM, UT, WY)
C	5	R4	*Phoxinus saylori*	Cyprinidae	Dace, laurel	U.S.A. (TN)
C*	11	R6	*Etheostoma cragini*	Percidae	Darter, Arkansas	U.S.A. (AR, CO, KS, MO, OK)
C*	5	R4	*Etheostoma susanae*	Percidae	Darter, Cumberland	U.S.A. (KY, TN)
C	2	R5	*Crystallaria cincotta*	Percidae	Darter, diamond	U.S.A. (KY, OH, TN, WV)
C*	8	R4	*Percina aurora*	Percidae	Darter, Pearl	U.S.A. (LA, MS)
C*	2	R4	*Etheostoma phytophilum*	Percidae	Darter, rush	U.S.A. (AL)
C*	2	R4	*Etheostoma moorei*	Percidae	Darter, yellowcheek	U.S.A (AR)
C*	2	R4	*Noturus crypticus*	Ictaluridae	Madtom, chucky	U.S.A. (TN)
C	5	R4	*Moxostoma sp.*	Catostomidae	Redhorse, sicklefin	U.S.A. (GA, NC, TN)
C*	2	R3	*Cottus sp.*	Cottidae	Sculpin, grotto	U.S.A. (MO)
C*	5	R2	*Notropis oxyrhynchus*	Cyprinidae	Shiner, sharpnose	U.S.A. (TX)
C*	5	R2	*Notropis buccula*	Cyprinidae	Shiner, smalleye	U.S.A. (TX)
C*	3	R2	*Catostomus discobolus yarrowi*	Catostomidae	Sucker, Zuni bluehead	U.S.A. (AZ, NM)
PSAT	N/A	R1	*Salvelinus malma*	Salmonidae	Trout, Dolly Varden	U.S.A. (AK, WA), Canada, East Asia
C*	9	R2	*Oncorhynchus clarki virginalis*	Salmonidae	Trout, Rio Grande cutthroat	U.S.A. (CO, NM)
CLAMS						
C	5	R4	*Villosa choctawensis*	Unionidae	Bean, Choctaw	U.S.A. (AL, FL)
C	2	R3	*Villosa fabalis*	Unionidae	Bean, rayed	U.S.A. (IL, IN, KY, MI, NY, OH, TN, PA, VA, WV), Canada (ON)
C	2	R4	*Fusconaia rotulata*	Unionidae	Ebonyshell, round	U.S.A. (AL, FL)
C*	8	R2	*Popenaias popei*	Unionidae	Hornshell, Texas	U.S.A. (NM, TX), Mexico
C*	2	R4	*Ptychobranchus subtentum*	Unionidae	Kidneyshell, fluted	U.S.A. (AL, KY, TN, VA)

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C	2	R4	*Ptychobranchus jonesi*	Unionidae	Kidneyshell, southern	U.S.A. (AL, FL)
C*	2	R4	*Lampsilis rafinesqueana*	Unionidae	Mucket, Neosho	U.S.A. (AR, KS, MO, OK)
C	2	R3	*Plethobasus cyphyus*	Unionidae	Mussel, sheepnose	U.S.A. (AL, IA, IL, IN, KY, MN, MO, MS, OH, PA, TN, VA, WI, WV)
C*	2	R4	*Margaritifera marrianae*	Margaritiferidae	Pearlshell, Alabama	U.S.A. (AL)
C*	2	R4	*Lexingtonia dolabelloides*	Unionidae	Pearlymussel, slabside	U.S.A. (AL, KY, TN, VA)
C	5	R4	*Pleurobema strodeanum*	Unionidae	Pigtoe, fuzzy	U.S.A. (AL, FL)
PE	2	R4	*Pleurobema hanleyianum*	Unionidae	Pigtoe, Georgia	U.S.A. (AL, GA, TN)
C	5	R4	*Fusconaia escambia*	Unionidae	Pigtoe, narrow	U.S.A. (AL, FL)
C	11	R4	*Fusconaia (=Quincuncina) burkei*	Unionidae	Pigtoe, tapered	U.S.A. (AL, FL)
C	9	R4	*Quadrula cylindrica cylindrica*	Unionidae	Rabbitsfoot	U.S.A. (AL, AR, GA, IN, IL, KS, KY, LA, MS, MO, OK, OH, PA, TN, WV)
C	5	R4	*Hamiota (=Lampsilis) australis*	Unionidae	Sandshell, southern	U.S.A. (AL, FL)
C	4	R3	*Cumberlandia monodonta*	Margaritiferidae	Spectaclecase	U.S.A. (AL, AR, IA, IN, IL, KS, KY, MO, MN, NE, OH, TN, VA, WI, WV)
C*	2	R4	*Elliptio spinosa*	Unionidae	Spinymussel, Altamaha	U.S.A. (GA)
SNAILS						
PE	2	R4	*Pleurocera foremani*	Pleuroceridae	Hornsnail, rough	U.S.A. (AL)
C	8	R4	*Elimia melanoides*	Pleuroceridae	Mudalia, black	U.S.A. (AL)
PE	2	R4	*Leptoxis foremani (= downei)*	Pleuroceridae	Rocksnail, Interrupted (= Georgia)	U.S.A. (GA, AL)
C*	2	R1	*Ostodes strigatus*	Potaridae	Sisi snail	U.S.A. (AS)
C*	2	R2	*Pseudotryonia adamantina*	Hydrobiidae	Snail, Diamond Y Spring	U.S.A. (TX)
C*	2	R1	*Samoana fragilis*	Partulidae	Snail, fragile tree	U.S.A. (GU, MP)
C*	2	R1	*Partula radiolata*	Partulidae	Snail, Guam tree	U.S.A. (GU)
C*	2	R1	*Partula gibba*	Partulidae	Snail, Humped tree	U.S.A. (GU, MP)
C*	2	R1	*Partulina semicarinata*	Achatinellidae	Snail, Lanai tree	U.S.A. (HI)
C*	2	R1	*Partulina variabilis*	Achatinellidae	Snail, Lanai tree	U.S.A. (HI)
C*	2	R1	*Partula langfordi*	Partulidae	Snail, Langford's tree	U.S.A. (MP)
C*	2	R2	*Cochliopa texana*	Hydrobiidae	Snail, Phantom cave	U.S.A. (TX)

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	2	R1	*Newcombia cumingi*	Achatinellidae	Snail, Newcomb's tree	U.S.A. (HI)
C*	2	R1	*Eua zebrina*	Partulidae	Snail, Tutuila tree	U.S.A. (AS)
C*	2	R2	*Pyrgulopsis chupaderae*	Hydrobiidae	Springsnail, Chupadera	U.S.A. (NM)
C*	11	R8	*Pyrgulopsis notidicola*	Hydrobiidae	Springsnail, elongate mud meadows	U.S.A. (NV)
C*	11	R2	*Pyrgulopsis gilae*	Hydrobiidae	Springsnail, Gila	U.S.A. (NM)
C*	2	R2	*Tryonia circumstriata* (=*stocktonensis*)	Hydrobiidae	Springsnail, Gonzales	U.S.A. (TX)
C*	8	R2	*Pyrgulopsis thompsoni*	Hydrobiidae	Springsnail, Huachuca	U.S.A. (AZ), Mexico
C*	11	R2	*Pyrgulopsis thermalis*	Hydrobiidae	Springsnail, New Mexico	U.S.A. (NM)
C*	2	R2	*Pyrgulopsis morrisoni*	Hydrobiidae	Springsnail, Page	U.S.A. (AZ)
C*	2	R2	*Tryonia cheatumi*	Hydrobiidae	Springsnail (=Tryonia), Phantom	U.S.A. (TX)
C	2	R2	*Pyrgulopsis bernardina*	Hydrobiidae	Springsnail, San Bernardino	U.S.A. (AZ), Mexico (Sonora)
C*	2	R2	*Pyrgulopsis trivialis*	Hydrobiidae	Springsnail, Three Forks	U.S.A. (AZ)
INSECTS						
C*	8	R1	*Nysius wekiuicola*	Lygaeidae	Bug, Wekiu	U.S.A. (HI)
C	3	R4	*Strymon acis bartrami*	Lycaenidae	Butterfly, Bartram's hairstreak	U.S.A. (FL)
C	3	R4	*Anaea troglodyta floridalis*	Nymphalidae	Butterfly, Florida leafwing	U.S.A. (FL)
C*	3	R1	*Hypolimnas octucula mariannensis*	Nymphalidae	Butterfly, Mariana eightspot	U.S.A. (GU, MP)
C*	2	R1	*Vagrans egistina*	Nymphalidae	Butterfly, Mariana wandering	U.S.A. (GU, MP)
C*	3	R4	*Cyclargus thomasi bethunebakeri*	Lycaenidae	Butterfly, Miami blue	U.S.A. (FL), Bahamas
C*	5	R4	*Glyphopsyche sequatchie*	Limnephilidae	Caddisfly, Sequatchie	U.S.A. (TN)
C	5	R4	*Pseudanophthalmus insularis*	Carabidae	Cave beetle, Baker Station (= insular)	U.S.A. (TN)
C*	5	R4	*Pseudanophthalmus caecus*	Carabidae	Cave beetle, Clifton	U.S.A. (KY)
C	11	R4	*Pseudanophthalmus colemanensis*	Carabidae	Cave beetle, Coleman	U.S.A. (TN)
C	5	R4	*Pseudanophthalmus fowlerae*	Carabidae	Cave beetle, Fowler's	U.S.A. (TN)
C*	5	R4	*Pseudanophthalmus frigidus*	Carabidae	Cave beetle, icebox	U.S.A. (KY)
C	5	R4	*Pseudanophthalmus tiresias*	Carabidae	Cave beetle, Indian Grave Point (= Soothsayer)	U.S.A. (TN)
C*	5	R4	*Pseudanophthalmus inquisitor*	Carabidae	Cave beetle, inquirer	U.S.A. (TN)

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	5	R4	*Pseudanophthalmus troglodytes*	Carabidae	Cave beetle, Louisville	U.S.A. (KY)
C	5	R4	*Pseudanophthalmus paulus*	Carabidae	Cave beetle, Noblett's	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus parvus*	Carabidae	Cave beetle, Tatum	U.S.A. (KY)
C*	3	R1	*Euphydryas editha taylori*	Nymphalidae	Checkerspot butterfly, Taylor's (= Whulge)	U.S. A. (OR, WA), Canada (BC)
C*	9	R1	*Megalagrion nigrohamatum nigrolineatum*	Coenagrionidae	Damselfly, blackline Hawaiian	U.S.A. (HI)
C*	2	R1	*Megalagrion leptodemas*	Coenagrionidae	Damselfly, crimson Hawaiian	U.S.A. (HI)
PE	2	R1	*Megalagrion nesiotes*	Coenagrionidae	Damselfly, flying earwig Hawaiian	U.S.A. (HI)
C*	2	R1	*Megalagrion oceanicum*	Coenagrionidae	Damselfly, oceanic Hawaiian	U.S.A. (HI)
C*	8	R1	*Megalagrion xanthomelas*	Coenagrionidae	Damselfly, orangeblack Hawaiian	U.S.A. (HI)
PE	2	R1	*Megalagrion pacificum*	Coenagrionidae	Damselfly, Pacific Hawaiian	U.S.A. (HI)
PE	2	R8	*Dinacoma caseyi*	Scarabidae	June beetle, Casey's	U.S.A. (CA)
C	5	R8	*Ambrysus funebris*	Naucoridae	Naucorid bug (=Furnace Creek), Nevares Spring	U.S.A. (CA)
PE	2	R1	*Drosophila attigua*	Drosophilidae	fly, Hawaiian picture-wing	U.S.A. (HI)
C*	2	R1	*Drosophila digressa*	Drosophilidae	fly, Hawaiian Picture-wing	U.S.A. (HI)
C*	8	R2	*Heterelmis stephani*	Elmidae	Riffle beetle, Stephan's	U.S.A. (AZ)
C*	8	R3	*Hesperia dacotae*	Hesperiidae	Skipper, Dakota	U.S.A. (MN, IA, SD, ND, IL), Canada
C*	8	R1	*Polites mardon*	Hesperiidae	Skipper, Mardon	U.S.A. (CA, OR, WA)
C*	2	R6	*Cicindela albissima*	Cicindelidae	Tiger beetle, Coral Pink Sand Dunes	U.S.A. (UT)
C*	5	R4	*Cicindela highlandensis*	Cicindelidae	Tiger beetle, highlands	U.S.A. (FL)
ARACHNIDS						
C*	2	R2	*Cicurina wartoni*	Dictynidae	Meshweaver, Warton's cave	U.S.A. (TX)
CRUSTACEANS						
C	2	R2	*Gammarus hyalleloides*	Gammaridae	Amphipod, diminutive	U.S.A. (TX)
C*	5	R1	*Metabetaeus lohena*	Alpheidae	Shrimp, anchialine pool	U.S.A. (HI)
C*	5	R1	*Palaemonella burnsi*	Palaemonidae	Shrimp, anchialine pool	U.S.A. (HI)
C*	5	R1	*Procaris hawaiana*	Procarididae	Shrimp, anchialine pool	U.S.A. (HI)

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	4	R1	*Vetericaris chaceorum*	Procaridae	Shrimp, anchialine pool	U.S.A. (HI)
FLOWERING PLANTS						
C*	11	R8	*Abronia alpina*	Nyctaginaceae	Sand-verbena, Ramshaw Meadows	U.S.A. (CA)
C*	8	R4	*Arabis georgiana*	Brassicaceae	Rockcress, Georgia	U.S.A. (AL, GA)
C*	11	R4	*Argythamnia blodgettii*	Euphorbiaceae	Silverbush, Blodgett's	U.S.A. (FL)
C*	3	R1	*Artemisia campestris* var. *wormskioldii*	Asteraceae	Wormwood, northern	U.S.A. (OR, WA)
PE	2	R1	*Astelia waialealae*	Liliaceae	Paʻiniu	U.S.A. (HI)
C*	5	R1	*Astragalus anserinus*	Fabaceae	Milkvetch, Goose Creek	U.S.A. (ID, NV, UT)
C*	11	R6	*Astragalus tortipes*	Fabaceae	Milkvetch, Sleeping Ute	U.S.A. (CO)
C*	2	R1	*Bidens amplectens*	Asteraceae	Koʻokoʻolau	U.S.A. (HI)
C*	3	R1	*Bidens campylotheca pentamera*	Asteraceae	Koʻokoʻolau	U.S.A. (HI)
C*	3	R1	*Bidens campylotheca waihoiensis*	Asteraceae	Koʻokoʻolau	U.S.A. (HI)
C*	8	R1	*Bidens conjuncta*	Asteraceae	Koʻokoʻolau	U.S.A. (HI)
C*	3	R1	*Bidens micrantha ctenophylla*	Asteraceae	Koʻokoʻolau	U.S.A. (HI)
C*	8	R4	*Brickellia mosieri*	Asteraceae	Brickell-bush, Florida	U.S.A. (FL)
C*	2	R1	*Calamagrostis expansa*	Poaceae	Reedgrass, Maui	U.S.A. (HI)
C*	2	R1	*Calamagrostis hillebrandii*	Poaceae	Reedgrass, Hillebrand's	U.S.A. (HI)
C*	5	R8	*Calochortus persistens*	Liliaceae	Mariposa lily, Siskiyou	U.S.A. (CA, OR)
PE	2	R1	*Canavalia napaliensis*	Fabaceae	ʻAwikiwiki	U.S.A. (HI)
C*	2	R1	*Canavalia pubescens*	Fabaceae	ʻAwikiwiki	U.S.A. (HI)
C*	8	R1	*Castilleja christii*	Scrophulariaceae	Paintbrush, Christ's	U.S.A. (ID)
C*	9	R4	*Chamaecrista lineata* var. *keyensis*	Fabaceae	Pea, Big Pine partridge	U.S.A. (FL)
C*	12	R4	*Chamaesyce deltoidea pinetorum*	Euphorbiaceae	Sandmat, pineland	U.S.A. (FL)
C*	9	R4	*Chamaesyce deltoidea serpyllum*	Euphorbiaceae	Spurge, wedge	U.S.A. (FL)
PE	2	R1	*Chamaesyce eleanoriae*	Euphorbiaceae	ʻAkoko	U.S.A. (HI)
PE	3	R1	*Chamaesyce remyi var. kauaiensis*	Euphorbiaceae	ʻAkoko	U.S.A. (HI)
PE	3	R1	*Chamaesyce remyi* var. *remyi*	Euphorbiaceae	ʻAkoko	U.S.A. (HI)
PE	2	R1	*Charpentiera densiflora*	Amaranthaceae	Papala	U.S.A. (HI)
C*	6	R8	*Chorizanthe parryi* var. *fernandina*	Polygonaceae	Spineflower, San Fernando Valley	U.S.A. (CA)

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	2	R4	*Chromolaena frustrata*	Asteraceae	Thoroughwort, Cape Sable	U.S.A. (FL)
C*	2	R4	*Consolea corallicola*	Cactaceae	Cactus, Florida semaphore	U.S.A. (FL)
C*	5	R4	*Cordia rupicola*	Boraginaceae	No common name	U.S.A. (PR), Anegada
C*	2	R1	*Cyanea asplenifolia*	Campanulaceae	Haha	U.S.A. (HI)
C*	2	R1	*Cyanea calycina*	Campanulaceae	Haha	U.S.A. (HI)
PE	–	R1	*Cyanea dolichopoda*	Campanulaceae	Haha	U.S.A. (HI)
PE	2	R1	*Cyanea eleeleensis*	Campanulaceae	Haha	U.S.A. (HI)
PE	–	R1	*Cyanea kolekoleensis*	Campanulaceae	Haha	U.S.A. (HI)
PE	2	R1	*Cyanea kuhihewa*	Campanulaceae	Haha	U.S.A. (HI)
C*	2	R1	*Cyanea kunthiana*	Campanulaceae	Haha	U.S.A. (HI)
C*	2	R1	*Cyanea lanceolata*	Campanulaceae	Haha	U.S.A. (HI)
C*	2	R1	*Cyanea obtusa*	Campanulaceae	Haha	U.S.A. (HI)
C*	2	R1	*Cyanea tritomantha*	Campanulaceae	ʻAku	U.S.A. (HI)
C*	2	R1	*Cyrtandra filipes*	Gesneriaceae	Haʻiwale	U.S.A. (HI)
C*	2	R1	*Cyrtandra kaulantha*	Gesneriaceae	Haʻiwale	U.S.A. (HI)
PE	2	R1	*Cyrtandra oenobarba*	Gesneriaceae	Haʻiwale	U.S.A. (HI)
C*	2	R1	*Cyrtandra oxybapha*	Gesneriaceae	Haʻiwale	U.S.A. (HI)
PE	–	R1	*Cyrtandra paliku*	Gesneriaceae	Haʻiwale	U.S.A. (HI)
C*	2	R1	*Cyrtandra sessilis*	Gesneriaceae	Haʻiwale	U.S.A. (HI)
C*	3	R4	*Dalea carthagenensis* var. *floridana*	Fabaceae	Prairie-clover, Florida	U.S.A. (FL)
C*	5	R5	*Dichanthelium hirstii*	Poaceae	Panic grass, Hirsts'	U.S.A. (DE, GA, NC, NJ)
C*	5	R4	*Digitaria pauciflora*	Poaceae	Crabgrass, Florida pineland	U.S.A. (FL)
PE	3	R1	*Dubautia imbricata imbricata*	Asteraceae	Naʻenaʻe	U.S.A. (HI)
PE	–	R1	*Dubautia kalalauensis*	Asteraceae	Naʻenaʻe	U.S.A. (HI)
PE	–	R1	*Dubautia kenwoodii*	Asteraceae	Naʻenaʻe	U.S.A. (HI)
PE	3	R1	*Dubautia plantaginea magnifolia*	Asteraceae	Naʻenaʻe	U.S.A. (HI)
PE	2	R1	*Dubautia waialealae*	Asteraceae	Naʻenaʻe	U.S.A. (HI)
C*	3	R2	*Echinomastus erectocentrus* var. *acunensis*	Cactaceae	Cactus, Acuna	U.S.A. (AZ), Mexico
C*	8	R2	*Erigeron lemmonii*	Asteraceae	Fleabane, Lemmon	U.S.A. (AZ)
C*	2	R1	*Eriogonum codium*	Polygonaceae	Buckwheat, Umtanum Desert	U.S.A. (WA)

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	6	R8	*Eriogonum corymbosum* var. *nilesii*	Polygonaceae	Buckwheat, Las Vegas	U.S.A. (NV)
C	5	R8	*Eriogonum diatomaceum*	Polygonaceae	Buckwheat, Churchill Narrows	U.S.A (NV)
C*	5	R8	*Eriogonum kelloggii*	Polygonaceae	Buckwheat, Red Mountain	U.S.A. (CA)
C*	2	R1	*Festuca hawaiiensis*	Poaceae	No common name	U.S.A. (HI)
C*	11	R2	*Festuca ligulata*	Poaceae	Fescue, Guadalupe	U.S.A. (TX), Mexico
C*	2	R1	*Gardenia remyi*	Rubiaceae	Nanu	U.S.A. (HI)
C*	8	R1	*Geranium hanaense*	Geraniaceae	Nohoanu	U.S.A. (HI)
C*	8	R1	*Geranium hillebrandii*	Geraniaceae	Nohoanu	U.S.A. (HI)
PE	5	R1	*Geranium kauaiense*	Geraniaceae	Nohoanu	U.S.A. (HI)
C*	5	R4	*Gonocalyx concolor*	Ericaceae	No common name	U.S.A. (PR)
C	2	R4	*Harrisia aboriginum*	Cactaceae	Pricklyapple, aboriginal (shellmound applecactus)	U.S.A. (FL)
C*	5	R8	*Hazardia orcuttii*	Asteraceae	Orcutt's hazardia	U.S.A. (CA), Mexico
C*	2	R1	*Hedyotis fluviatilis*	Rubiaceae	Kampuaʻa	U.S.A. (HI)
C*	8	R4	*Helianthus verticillatus*	Asteraceae	Sunflower, whorled	U.S.A. (AL, GA, TN)
C*	5	R2	*Hibiscus dasycalyx*	Malvaceae	Rose-mallow, Neches River	U.S.A. (TX)
C	2	R6	*Ipomopsis polyantha*	Polemoniaceae	Skyrocket, Pagosa	U.S.A. (CO)
C*	5	R8	*Ivesia webberi*	Rosaceae	Ivesia, Webber	U.S.A. (CA, NV)
C*	3	R1	*Joinvillea ascendens ascendens*	Joinvilleaceae	ʻOhe	U.S.A. (HI)
PE	2	R1	*Keysseria erici*	Asteraceae	No common name	U.S.A. (HI)
PE	8	R1	*Keysseria helenae*	Asteraceae	No common name	U.S.A. (HI)
C*	2	R1	*Korthalsella degeneri*	Viscaceae	Hulumoa	U.S.A. (HI)
PE	2	R1	*Labordia helleri*	Loganiaceae	Kamakahala	U.S.A. (HI)
PE	2	R1	*Labordia pumila*	Loganiaceae	Kamakahala	U.S.A. (HI)
C*	5	R4	*Leavenworthia crassa*	Brassicaceae	Gladecress, unnamed	U.S.A. (AL)
C	3	R4	*Leavenworthia exigua* var. *laciniata*	Brassicaceae	Gladecress, Kentucky	U.S.A. (KY)
C*	2	R2	*Leavenworthia texana*	Brassicaceae	Gladecress, Texas golden	U.S.A. (TX)
PE	–	R1	*Lepidium papilliferum*	Brassicaceae	Peppergrass, slickspot	U.S.A. (ID)
C*	8	R4	*Lesquerella globosa*	Brassicaceae	Bladderpod, Short's	U.S.A. (IN, KY, TN)
C*	2	R4	*Linum arenicola*	Linaceae	Flax, sand	U.S.A. (FL)

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	3	R4	*Linum carteri* var. *carteri*	Linaceae	Flax, Carter's small-flowered	U.S.A. (FL)
PE	8	R1	*Lysimachia daphnoides*	Myrsinaceae	Lehua makanoe	U.S.A. (HI)
PE	–	R1	*Lysimachia iniki*	Myrsinaceae	No common name	U.S.A. (HI)
PE	–	R1	*Lysimachia pendens*	Myrsinaceae	No common name	U.S.A. (HI)
PE	–	R1	*Lysimachia scopulensis*	Myrsinaceae	No common name	U.S.A. (HI)
PE	–	R1	*Lysimachia venosa*	Myrsinaceae	No common name	U.S.A. (HI)
C*	2	R1	*Melicope christophersenii*	Rutaceae	Alani	U.S.A. (HI)
PE	2	R1	*Melicope degeneri*	Rutaceae	Alani	U.S.A. (HI)
C*	2	R1	*Melicope hiiakae*	Rutaceae	Alani	U.S.A. (HI)
C*	2	R1	*Melicope makahae*	Rutaceae	Alani	U.S.A. (HI)
PE	2	R1	*Melicope paniculata*	Rutaceae	Alani	U.S.A. (HI)
PE	2	R1	*Melicope puberula*	Rutaceae	Alani	U.S.A. (HI)
C*	2	R1	*Myrsine fosbergii*	Myrsinaceae	Kolea	U.S.A. (HI)
PE	–	R1	*Myrsine knudsenii*	Myrsinaceae	Kolea	U.S.A. (HI)
PE	2	R1	*Myrsine mezii*	Myrsinaceae	Kolea	U.S.A. (HI)
C*	2	R1	*Myrsine vaccinioides*	Myrsinaceae	Kolea	U.S.A. (HI)
C*	8	R5	*Narthecium americanum*	Liliaceae	Asphodel, bog	U.S.A. (DE, NC, NJ, NY, SC)
C*	2	R1	*Nothocestrum latifolium*	Solanaceae	ʻAiea	U.S.A. (HI)
C*	2	R1	*Ochrosia haleakalae*	Apocynaceae	Holei	U.S.A. (HI)
C*	3	R2	*Pediocactus peeblesianus* var. *fickeiseniae*	Cactaceae	Cactus, Fickeisen plains	U.S.A. (AZ)
C*	2	R6	*Penstemon debilis*	Scrophulariaceae	Beardtongue, Parachute	U.S.A. (CO)
C*	6	R6	*Penstemon scariosus* var. *albifluvis*	Scrophulariaceae	Beardtongue, White River	U.S.A. (CO, UT)
C*	2	R1	*Peperomia subpetiolata*	Piperaceae	ʻAla ʻala wai nui	U.S.A. (HI)
C	5	R8	*Phacelia stellaris*	Hydrophyllaceae	Phacelia, Brand's	U.S.A. (CA), Mexico
C*	8	R6	*Phacelia submutica*	Hydrophyllaceae	Phacelia, DeBeque	U.S.A. (CO)
C*	2	R1	*Phyllostegia bracteata*	Lamiaceae	No common name	U.S.A. (HI)
C*	8	R1	*Phyllostegia floribunda*	Lamiaceae	No common name	U.S.A. (HI)
PE	–	R1	*Phyllostegia renovans*	Lamiaceae	No common name	U.S.A. (HI)
C*	9	R1	*Physaria douglasii tuplashensis*	Brassicaceae	Bladderpod, White Bluffs	U.S.A. (WA)
PE	2	R1	*Pittosporum napaliense*	Pittosporaceae	Hoʻawa	U.S.A. (HI)
C*	8	R4	*Platanthera integrilabia*	Orchidaceae	Orchid, white fringeless	U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA)

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	3	R1	*Platydesma cornuta* var. *cornuta*	Rutaceae	No common name	U.S.A. (HI)
C*	3	R1	*Platydesma cornuta* var. *decurrens*	Rutaceae	No common name	U.S.A. (HI)
C*	2	R1	*Platydesma remyi*	Rutaceae	No common name	U.S.A. (HI)
PE	2	R1	*Platydesma rostrata*	Rutaceae	Pilo kea lau liʻi	U.S.A. (HI)
C	2	R1	*Pleomele fernaldii*	Agavaceae	Hala pepe	U.S.A. (HI)
C*	2	R1	*Pleomele forbesii*	Agavaceae	Hala pepe	U.S.A. (HI)
C*	11	R8	*Potentilla basaltica*	Rosaceae	Cinquefoil, Soldier Meadow	U.S.A. (NV)
PE	2	R1	*Pritchardia hardyi*	Asteraceae	Loʻulu	U.S.A. (HI)
C*	3	R1	*Pseudognaphalium* (=*Gnaphalium*) *sandwicensium* var. *molokaiense*	Asteraceae	ʻEnaʻena	U.S.A. (HI)
PE	2	R1	*Psychotria grandiflora*	Rubiaceae	Kopiko	U.S.A. (HI)
C*	3	R1	*Psychotria hexandra* ssp. *oahuensis* var. *oahuensis*	Rubiaceae	Kopiko	U.S.A. (HI)
PE	2	R1	*Psychotria hobdyi*	Rubiaceae	Kopiko	U.S.A. (HI)
C*	2	R1	*Pteralyxia macrocarpa*	Apocynaceae	Kaulu	U.S.A. (HI)
C*	2	R1	*Ranunculus hawaiensis*	Ranunculaceae	Makou	U.S.A. (HI)
C*	2	R1	*Ranunculus mauiensis*	Ranunculaceae	Makou	U.S.A. (HI)
C*	8	R8	*Rorippa subumbellata*	Brassicaceae	Cress, Tahoe yellow	U.S.A. (CA, NV)
PE	2	R1	*Schiedea attenuata*	Caryophyllaceae	No common name	U.S.A. (HI)
C*	2	R1	*Schiedea pubescens*	Caryophyllaceae	Maʻoliʻoli	U.S.A. (HI)
C*	2	R1	*Schiedea salicaria*	Caryophyllaceae	No common name	U.S.A. (HI)
C*	5	R8	*Sedum eastwoodiae*	Crassulaceae	Stonecrop, Red Mountain	U.S.A. (CA)
C*	2	R1	*Sicyos macrophyllus*	Cucurbitaceae	ʻAnunu	U.S.A. (HI)
C	12	R4	*Sideroxylon reclinatum austrofloridense*	Sapotaceae	Bully, Everglades	U.S.A. (FL)
C*	8	R1	*Solanum nelsonii*	Solanaceae	Popolo	U.S.A. (HI)
C	8	R4	*Solidago plumosa*	Asteraceae	Goldenrod, Yadkin River	U.S.A. (NC)
C	2	R2	*Sphaeralcea gierischii*	Malvaceae	Mallow, Gierisch	U.S.A. (AZ, UT)
C*	2	R1	*Stenogyne cranwelliae*	Lamiaceae	No common name	U.S.A. (HI)
PE	2	R1	*Stenogyne kealiae*	Lamiaceae	No common name	U.S.A. (HI)
C*	8	R4	*Symphyotrichum georgianum*	Asteraceae	Aster, Georgia	U.S.A. (AL, FL, GA, NC, SC)
PE	–	R1	*Tetraplasandra bisattenuata*	Araliaceae	No common name	U.S.A. (HI)
PE	–	R1	*Tetraplasandra flynnii*	Araliaceae	No common name	U.S.A. (HI)

TABLE 1. - CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	2	R1	*Zanthoxylum oahuense*	Rutaceae	A'e	U.S.A. (HI)
FERNS AND ALLIES						
C*	8	R1	*Christella boydiae* (= *Cyclosorus boydiae* var. *boydiae* + *Cyclosorus boydiae kipahuluensis*)	Thelypteridaceae	No common name	U.S.A. (HI)
PE	–	R1	*Diellia mannii*	Aspleniaceae	No common name	U.S.A. (HI)
PE	–	R1	*Doryopteris angelica*	Pteridaceae	No common name	U.S.A. (HI)
C*	2	R1	*Doryopteris takeuchii*	Pteridaceae	No common name	U.S.A. (HI)
PE	–	R1	*Dryopteris crinalis* var. *podosorus*	Dryopteridaceae	Palapalai aumakua	U.S.A. (HI)
C*	2	R1	*Huperzia* (= *Phlegmariurus*) *stemmermanniae*	Lycopodiaceae	Wawae'iole	U.S.A. (HI)
C*	3	R1	*Microlepia strigosa* var. *mauiensis* (= *Microlepia mauiensis*)	Dennstaedtiaceae	Palapalai	U.S.A. (HI)
C	3	R4	*Trichomanes punctatum floridanum*	Hymenophyllaceae	Florida bristle fern	U.S.A. (FL)

TABLE 2. ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING

Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.

Status	Lead region	Scientific name	Family	Common name	Historical range	
					Code	Expl.
SNAILS						
Rc	A	R6	*Stagnicola bonnevillensis*	Lymnaeidae	Pondsnail, fat-whorled (=Bonneville)	U.S.A. (UT)
CRUSTACEANS						
Rc	A	R4	*Typhlatya monae*	Atyidae	Shrimp, troglobitic groundwater	U.S.A. (PR), Barbuda, Dominican Republic
FLOWERING PLANTS						
Rc	A	R4	*Calliandra locoensis*	Mimosaceae	No common name	U.S.A. (PR)
Rc	A	R4	*Calyptranthes estremerae*	Myrtaceae	No common name	U.S.A. (PR)
E	L	R1	*Phyllostegia hispida*	Lamiaceae	No Common Name	U.S.A. (HI)

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Federal Register

Monday,
November 9, 2009

Part IV

The President

Memorandum of November 5, 2009—Tribal Consultation

Federal Register
Vol. 74, No. 215
Monday, November 9, 2009

Presidential Documents

Title 3—

The President

Memorandum of November 5, 2009

Tribal Consultation

Memorandum for the Heads of Executive Departments And Agencies

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship.

My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation process more effective, if any, should be included in this report.

The terms ''Indian tribe,'' ''tribal officials,'' and ''policies that have tribal implications'' as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the *Federal Register*.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

THE WHITE HOUSE,
Washington, November 5, 2009.

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