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Contents

Federal Register

Vol. 74, No. 219

Monday, November 16, 2009

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Rural Utilities Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58979–58981, 58984–58987

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58937–58938
Availability of an Environmental Assessment for a Biological Control Agent for Water Hyacinth, 58939–58940

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Census Bureau
NOTICES
2009 Company Organization Survey, 58944–58945
Annual Surveys in the Manufacturing Area, 58945–58946

Centers for Disease Control and Prevention
NOTICES
Request for Information on Source Capture Ventilation Systems (SCVS):
Units for use in Nail Salons, Including Downdraft Vented Nail Tables and Portable SCVS, 58965–58966

Coast Guard
PROPOSED RULES
Drawbridge Operation Regulations:
Port of Coos Bay Railroad Bridge, Coos Bay, North Bend, OR, 58931–58933
Snohomish River, Steamboat Slough, and Ebey Slough; Everett and Marysville, WA, 58933–58936

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 58949–58950

Commodity Credit Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58938–58939

Defense Department
See Engineers Corps
RULES
Homeowners Assistance Program:
Application Processing, 58846
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58950

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Drug Enforcement Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58982–58984

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58950–58952

Employee Benefits Security Administration
NOTICES
Application Nos. and Proposed Exemptions:
JPMorgan Chase Bank, N.A., et al., 58987–59000
Prohibited Transaction Exemption; Exemption Application:
United States Steel and Carnegie Pension Fund, New York, NY, 59001
Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving:
PTE 2009–29, Iron Workers Local 17 Pension Fund (the Plan), D–11432, etc., 59001–59012

Energy Department
PROPOSED RULES
Energy Conservation Standards:
Residential Refrigerators, Refrigerator–Freezers, and Freezers; Meeting and Preliminary Technical Support Document Availability, 58915–58918
NOTICES
Availability of the U.S. Department of Energy Interim Guidance:
Packaging, Transportation, Receipt, Management, and Long-Term Storage of Elemental Mercury, 58952–58953

Engineers Corps
RULES
Danger Zone and Restricted Area Regulations:
Marine Corps Base Hawaii, Kaneohe Bay, Island of Oahu, HI, 58846–58848
Restricted Areas at Cape Canaveral Air Force Station, Patrick AFB, FL, 58848–58849

Environmental Protection Agency
NOTICES
Meetings:
Good Neighbor Environmental Board, 58953
Proposed Consent Decree, Clean Air Act Citizen Suit, 58953–58954

Proposed Consent Decrees, 58954–58955
Proposed Settlement Agreement, Clean Air Act Citizen Suit, 58955–58957
Registration Applications:
Pesticide Products, 58957–58959

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
Mitsubishi Heavy Industries, Ltd. Various Model MU–2B Airplanes, 58919–58923
Certification of Turbojets; Extension of Comment Period, 58918–58919

Federal Bureau of Investigation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58981–58982

Federal Communications Commission
RULES
FM Table of Allotments:
Dubois, WY, 58851
PROPOSED RULES
Radio Broadcasting Services:
Kahuku, HI, 58936
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58959–58961

Federal Emergency Management Agency
RULES
Criminal and Civil Penalties:
Under The Robert T. Stafford Disaster Relief And Emergency Assistance Act, 58849–58851

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 58962

Federal Motor Carrier Safety Administration
NOTICES
City of Boston Requirements for Highway Routing of Certain Hazardous Materials, 59021–59027
Meetings; Sunshine Act, 59027

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 58961
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 58961

Financial Crimes Enforcement Network
PROPOSED RULES
Expansion of Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, 58926–58931

Fish and Wildlife Service
NOTICES
Receipt Applications for Permit, 58977–58978

Food and Drug Administration
RULES
Listing of Color Additives Exempt From Certification:
Paracoccus Pigment, 58843–58846

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58973–58975

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See Transportation Security Administration
See U.S. Customs and Border Protection
RULES
Prohibition of Awards:
Federal Protective Service Guard Services Contracts with Business Concerns Owned, Controlled, or Operated By an Individual Convicted of a Felony, 58851–58859
NOTICES
Meetings:
DHS Data Privacy and Integrity Advisory Committee, 58966–58967

Housing and Urban Development Department
NOTICES
Closing of Application Solicitation:
Recovery Act, Green Retrofit Program for Multifamily Housing, 58973
Fund Availability:
Fiscal Year 2009 Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act of 2009; Correction, 58973

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Minerals Management Service

International Trade Administration
NOTICES
Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review:
Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 58946
Final Results of Antidumping Duty Administrative Review:
Polyethylene Retail Carrier Bags from Malaysia, 58947–58948

International Trade Commission
NOTICES
Determinations:
Certain Standard Steel Fasteners from China and Taiwan, 58978
Investigations:
Certain Liquid Crystal Display Modules, Products Containing Same, And Methods Using The Same, 58978–58979

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Drug Enforcement Administration
See Federal Bureau of Investigation

Labor Department
See Employee Benefits Security Administration

Minerals Management Service
NOTICES
Availability of the Proposed Notice of Sale:
Outer Continental Shelf Oil and Gas Lease Sale 213 in Central Planning Area in Gulf of Mexico, 58975–58976
Environmental Impact Statements; Availability, etc.:
Gulf of Mexico, Outer Continental Shelf, Central Planning Area, Oil and Gas Lease Sale 213 (2010), 58976–58977

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 59012

National Highway Traffic Safety Administration
NOTICES
Petitions for Exemption from the Federal Motor Vehicle Motor Theft Prevention Standard:
Jaguar Land Rover, 59027–59028
Petitions for Exemption from the Vehicle Theft Prevention Standard:
Fuji Heavy Industries U.S.A., Inc., 59028–59030

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58962–58963
Meetings:
Center for Scientific Review, 58963–58965
National Cancer Institute, 58964–58965
National Institute of Neurological Disorders and Stroke, 58963–58964
Office of the Director, National Institutes of Health, 58965

National Oceanic and Atmospheric Administration
RULES
2010 List of Fisheries, 58859–58901
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Snapper–Grouper Fishery off Southern Atlantic States; Amendment 15B; Reef Fish Fishery of Gulf of Mexico, 58902–58914
PROPOSED RULES
Marine Sanitation Device Discharge Regulations:
Florida Keys National Marine Sanctuary, 58923–58926
NOTICES
Indirect Cost Rates for the Damage Assessment, Remediation, and Restoration Program (Fiscal Years 2007 and 2008), 58948–58949

National Science Foundation
NOTICES
Meetings:
Advisory Committee for Cyberinfrastructure (25150), 59013
Proposal Review Panel for Materials Research, 59012–59013
Meetings; Sunshine Act, 59013

National Telecommunications and Information Administration
NOTICES
Broadband Initiatives Program and Broadband Technology Opportunities Program, 58940–58944

Nuclear Regulatory Commission
NOTICES
Environmental Impact Statements; Availability, etc.:
Eastern Connecticut State University's Facility in Willimantic, CT, 59013–59015
Meetings; Sunshine Act, 59015

Pipeline and Hazardous Materials Safety Administration
NOTICES
Applications for Modification of Special Permits, 59019–59020
Applications for Special Permits, 59020–59021

Postal Regulatory Commission
NOTICES
New Postal Product, 59015–59016

Presidio Trust
NOTICES
Meetings:
Presidio Trust Board of Directors, 59016–59017

Research and Innovative Technology Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59018–59019

Rural Utilities Service
NOTICES
Broadband Initiatives Program and Broadband Technology Opportunities Program, 58940–58944

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 59017

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration
See Research and Innovative Technology Administration
See Transportation Security Administration
NOTICES
Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009, 59017–59018

Transportation Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58967–58970

Treasury Department
See Financial Crimes Enforcement Network
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59030–59031

U.S. Customs and Border Protection
NOTICES
Issuance of Final Determination Concerning Toner Cartridges and Image Drums, 58970–58973

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR

Proposed Rules:

430 58915

14 CFR

Proposed Rules:

1 58918
23 58918
39 58919

15 CFR

Proposed Rules:

922 58923

21 CFR

73 58843

31 CFR

Proposed Rules:

103 58926

32 CFR

239 58846

33 CFR

334 (2 documents) 58846, 58848

Proposed Rules:

117 (2 documents) 58931, 58933

44 CFR

206 58849

47 CFR

73 58851

Proposed Rules:

73 58936

48 CFR

3009 58851
3052 58851

50 CFR

229 58859
622 58902

Rules and Regulations

Federal Register
Vol. 74, No. 219
Monday, November 16, 2009

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

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2007–C–0456] (formerly Docket No. 2007–C–0245)

Listing of Color Additives Exempt From Certification; Paracoccus Pigment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of paracoccus pigment as a color additive in the feed of salmonid fish to enhance the color of their flesh. This action is in response to a petition filed by Nippon Oil Corp.

DATES: This rule is effective December 17, 2009, except as to any provisions that may be stayed by the filing of proper objections. Submit electronic or written objections and requests for a hearing by December 16, 2009. See section X of this document for information on the filing of objections.

ADDRESSES: You may submit electronic or written objections and requests for a hearing identified by Docket No. FDA–2007–C–0456, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following way:

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

Written Submissions

Submit written objections in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of objections, FDA is no longer accepting objections submitted to the agency by e-mail. FDA encourages you to continue to submit electronic objections by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All objections received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting objections, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or objections received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mical E. Honigfort, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1278.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of July 9, 2007 (72 FR 37243), FDA announced that a color additive petition (CAP 7C0283) had been filed by Nippon Oil Corp., c/o Beckloff Associates, 7400 West 110th St. suite 300, Overland Park, KS 66210. The petition proposed to amend the color additive regulations in part 73 (21 CFR part 73) to provide for the safe use of *Paracoccus carotinifaciens (P. carotinifaciens)* granules as a color additive in the feed of salmonid fish to enhance the color of their flesh. This color additive is commonly known as paracoccus pigment. Therefore, the agency is establishing paracoccus pigment as the common or usual name for this color additive.

II. Identity, Technical Effect, and Specifications

Paracoccus pigment consists of cells of the bacterium *P. carotinifaciens* that are produced by fermentation, and then killed by heat. The major components of the dried cells are proteins, carbohydrates, and lipids. The cells may be mixed with calcium carbonate added as necessary to yield a granular solid that contains at least 1.75 percent (weight/weight) astaxanthin and lesser amounts of other carotenoids as coloring agents. Calcium carbonate is added to adjust the astaxanthin content to the appropriate level in the final pigment. The primary coloring substance in paracoccus pigment is astaxanthin, which is typically present in the color additive at an average concentration of 2.18 percent, and represents approximately 51 percent of the total carotenoids present. The approximate levels of other carotenoids present in paracoccus pigment at lower levels that contribute to the color of the salmonid flesh are adonirubin (30 percent), canthaxanthin (10 percent), adonixanthin (4 percent), and asteroidenone (2 percent). When fed to salmonid fish, the petitioned use of paracoccus pigment results in deposition of very small amounts of carotenoids in the flesh of the fish. Studies included in the petition showed that paracoccus pigment at the intended level of use satisfactorily pigmented the flesh of the fish to levels comparable to that in wild salmonids.

In the **Federal Register** of April 13, 1995 (60 FR 18736), the agency published a final rule that listed astaxanthin in § 73.35 (21 CFR 73.35) for use in the feed of salmonid fish. In that final rule, the agency concluded that 80 milligrams (mg) of astaxanthin per (/) kilogram (kg) of finished feed would result in adequate pigmentation of the flesh of salmonid fish. Therefore, in § 73.35(c)(2), the agency limited the astaxanthin content of finished feed to not more than 80 mg/kg. In the **Federal Register** of July 6, 2000, the agency published final rules that listed haematococcus algae meal in § 73.185 (65 FR 41581) and phaffia yeast in § 73.355 (65 FR 41584) as additional sources of astaxanthin for use in the feed of salmonid fish. Both

haematococcus algae meal and phaffia yeast may be used alone or in combination with other astaxanthin color additive sources, provided that the quantity of astaxanthin in the finished feed does not exceed 80 mg/kg. Canthaxanthin also is listed for use as a color additive in salmonid fish feed with a limit of 80 mg/kg of finished feed (§ 73.75).

Consistent with these other listings, the petitioner proposes that the maximum amount of astaxanthin in finished feed from the use of paracoccus pigment not exceed 80 mg/kg and has requested that this level be specified in the listing regulation. Because of the other listed sources of astaxanthin and other color additives that are sources of astaxanthin the agency may list in the future, new § 73.352(c)(2) requires that the quantity of astaxanthin in finished feed, from paracoccus pigment when used alone or in combination with other astaxanthin color additive sources listed in part 73, shall not exceed 80 mg/kg (72 grams per ton) of finished feed.

III. Evaluation of Safety

In evaluating the safety of the use of paracoccus pigment in fish feed, FDA considered the safety of the paracoccus pigment to humans and fish and the safety of the producing organism, *P. carotinifaciens*.

A. Safety of Paracoccus Pigment

Because consumers are not directly exposed to the paracoccus pigment, FDA focused its review on the safety of the carotenoids present in the pigment that are deposited in the fish. The agency considered the safety of astaxanthin and canthaxanthin, which are already approved for use in the feed of salmonid fish, as well as the safety of the other carotenoids in the pigment. Astaxanthin and canthaxanthin are two substances found in wild salmonids that are responsible for imparting the pink or red coloring to the flesh of these fish. The agency has determined that the astaxanthin and canthaxanthin from paracoccus pigment, which account for approximately 60 percent of the total carotenoids in paracoccus pigment, will substitute for the fish feed uses of other approved color additive sources of these carotenoids. Additionally, the agency considers the intake of astaxanthin and canthaxanthin from the consumption of wild salmon and the intake of astaxanthin and canthaxanthin from consumption of farm-raised salmonid fish that have been fed approved color additive sources of these carotenoids to be comparable. Therefore, the agency concludes that the petitioned use of paracoccus pigment will not increase the estimated daily intake of astaxanthin and canthaxanthin, and that these two carotenoids are safe as components of the paracoccus pigment in the feed of salmonid fish.

To support the safety of the petitioned use of the subject color additive, including the carotenoids adonirubin, adonixanthin, and asteroidenone, the petitioner provided data from studies in which sea bream and rainbow trout were fed feed containing paracoccus pigment at levels up to 5 percent in the feed. The studies did not reveal any toxicity to the target fish species. Therefore, FDA concludes that the petitioned use of paracoccus pigment is safe to salmonid fish. The petitioner also provided results from toxicity studies in which rats were fed paracoccus pigment. These studies did not reveal any adverse effects from exposure to paracoccus pigment. Importantly, consumers will not be directly exposed to paracoccus pigment, but to carotenoids remaining in the fish that have consumed the color additive in their diet. Therefore, based on the exposure estimates for the individual carotenoids, the results from the fish and rat toxicity studies and genetic toxicity tests, as well as previous safety determinations regarding the use of astaxanthin and canthaxanthin in salmonid fish feed, FDA concludes that there is a reasonable certainty of no harm to consumers from the petitioned use of paracoccus pigment.

B. Safety of the Producing Organism, P. carotinifaciens

FDA reviewed the pathogenicity, toxigenic potential, and antimicrobial activity of the producing organism, *P. carotinifaciens*. The heat treatment during production of paracoccus pigment ensures that no viable *P. carotinifaciens* cells will be in the final product and ensures that there is no pathogenic or toxigenic potential of *P. carotinifaciens* in the production of paracoccus pigment. In addition, as a condition of safe use, FDA is requiring that only a nonpathogenic and nontoxicogenic strain of the bacterium *P. carotinifaciens* be used in the production of paracoccus pigment. FDA also reviewed a study that provided evidence that the strain of *P. carotinifaciens* used to produce paracoccus pigment is not capable of producing antibiotics. Based on this information and the fact that consumers will not be directly exposed to paracoccus pigment, but to carotenoids remaining in the fish that have consumed the pigment, FDA concludes that the petitioned use of *P. carotinifaciens* in the production of paracoccus pigment is safe.

IV. Labeling Requirements

All color additives, in accordance with § 70.25 (21 CFR 70.25), are required to be labeled with sufficient information to assure their safe use and to allow a determination of compliance with any limitations imposed by the agency in other applicable regulations. The labeling of the color additive, paracoccus pigment, and any mixture prepared therefrom, is subject to the requirements of § 70.25.

According to § 70.25(a)(4), an expiration date for a color additive must be stated on its label if stability data require it. FDA finds that because of the instability of astaxanthin in paracoccus pigment, an expiration date must be stated on the label of sealed and open containers, in accordance with § 70.25(a)(4). FDA also finds that declaration of the expiration date constitutes a material fact that must be disclosed on the label of the color additive mixture under sections 201(n) and 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(n) and 343(a)(1)). Failure to disclose the material fact on the label of the color additive mixture would constitute a failure to reveal facts that are: (1) Material in light of the representations made on the label and (2) material with respect to consequences which may result from the use of the color additive. The use of paracoccus pigment requires the declaration of expiration dates because astaxanthin in paracoccus pigment is unstable and can decompose, thereby affecting the efficacy of the color.

In addition to the requirements for labeling the color additive or color additive mixture, the ingredient list on fish feed, to which paracoccus pigment is added, must identify the presence of the color additive under § 501.4 (21 CFR 501.4). New § 73.352(d)(2) references § 501.4 to ensure that the presence of paracoccus pigment as a color additive in the fish feed will be declared on the ingredient label. Finally, the presence of the color additive must be declared on the label of any food, including salmonid fish, containing added paracoccus pigment and food containing such salmonid fish as an ingredient. Section 101.22(b) (21 CFR 101.22(b)) requires a food that bears or contains artificial coloring, such as salmon artificially colored with paracoccus pigment, to bear labeling even though such food is not in package form. Section 101.22(c) (21 CFR 101.22(c)) requires that label statements of artificial coloring be ''likely to be read

by the ordinary person under customary conditions of purchase and use of such food.''

Furthermore, § 101.22(k)(2) requires, in the statement of ingredients for a food to which any coloring has been added, and for which the coloring is not subject to certification, a declaration that makes it clear that a color additive has been used in the food. In addition, the presence of a color additive in a food received in a bulk container that is held at a retail establishment must be declared on the labeling of the bulk container or on a counter card or other similar device under the provisions in § 101.100(a)(2) (21 CFR 101.100(a)(2)). The ingredient label would alert the consumer that the fish is artificially colored. Without such ingredient labeling, food comprising salmonid fish with added paracoccus pigment would be deemed to be misbranded under section 403(k) of the Federal Food, Drug, and Cosmetic Act, which states that: A food shall be deemed to be misbranded ''If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact * * *.''

Therefore, in accordance with §§ 101.22(b), (c), and (k)(2), and 101.100(a)(2), labeling on any salmonid fish containing paracoccus pigment is required to declare the presence of the color additive or color additive mixture. New § 73.352(d)(3) references §§ 101.22(b), (c), and (k)(2), and 101.100(a)(2) to ensure that, at the retail level, the presence of paracoccus pigment as a color additive in the fish will be declared, and that the labeling of the bulk fish container, including a list of ingredients, will be displayed on the container or on a counter card with similar information.

V. Conclusion

FDA reviewed data in the petition and other available relevant material to evaluate the safety of the use of paracoccus pigment as a color additive in the feed of salmonid fish to enhance the color of their flesh. Based on this information, the agency concludes that the proposed use of the additive is safe, and the additive will achieve its intended technical effect. Therefore, the regulations in part 73 should be amended as set forth in this document. In addition, based upon the factors listed in § 71.20(b) (21 CFR 71.20(b)), the agency concludes that certification of paracoccus pigment is not necessary for the protection of the public health.

VI. Public Disclosure

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition will be made available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for CAP 7C0283 (72 FR 37243). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VIII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. Section 301(ll) of the Federal Food, Drug, and Cosmetic Act

FDA's review of this petition was limited to section 721 of the act (21 U.S.C. 379e). This final rule is not a statement regarding compliance with other sections of the act. For example, the Food and Drug Administration Amendments Act of 2007, which was signed into law on September 27, 2007, amended the act to, among other things, add section 301(ll). Section 301(ll) of the act (21 U.S.C. 331(ll)) prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exemptions in section 301(ll)(1) through (4) applies. In our review of this petition, FDA did not consider whether section 301(ll) or any of its exemptions apply to food containing this additive. Accordingly, this final rule should not be construed to be a statement that a food containing this additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(ll). Furthermore, this language is now included in all color additive final rules for food use and therefore should not be construed to be a statement of the likelihood that section 301(ll) applies.

X. Objections

This rule is effective as shown in the **DATES** section of this document; except as to any provisions that may be stayed by the filing of proper objections. Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) electronic or written objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Section 73.352 is added to subpart A to read as follows:

§ 73.352 Paracoccus pigment.

(a) *Identity.* (1) The color additive paracoccus pigment consists of the heat-killed, dried cells of a nonpathogenic and nontoxicogenic strain of the bacterium *Paracoccus carotinifaciens* and may contain added calcium carbonate to adjust the astaxanthin level.

(2) Color additive mixtures for fish feed use made with paracoccus pigment may contain only those diluents that are suitable and are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* Paracoccus pigment shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such impurities may be avoided by good manufacturing practice:

(1) Physical state, solid.

(2) Lead, not more than 5 milligrams per kilogram (mg/kg) (5 parts per million (ppm)).

(3) Arsenic, not more than 2 mg/kg (2 ppm).

(4) Mercury, not more than 1 mg/kg (1 ppm).

(5) Heavy metals (as Pb), not more than 10 mg/kg (10 ppm).

(6) Astaxanthin, not less than 1.75 percent.

(c) *Uses and restrictions.* Paracoccus pigment may be safely used in the feed of salmonid fish in accordance with the following prescribed conditions:

(1) The color additive is used to enhance the pink to orange-red color of the flesh of salmonid fish.

(2) The quantity of astaxanthin in finished feed, from paracoccus pigment when used alone or in combination with other astaxanthin color additive sources listed in this part 73, shall not exceed 80 mg/kg (72 grams per ton) of finished feed.

(d) *Labeling requirements.* (1) The labeling of the color additive and any premixes prepared therefrom shall bear expiration dates for the sealed and open container (established through generally accepted stability testing methods), other information required by § 70.25 of this chapter, and adequate directions to prepare a final product complying with the limitations prescribed in paragraph (c) of this section.

(2) The presence of the color additive in finished fish feed prepared according to paragraph (c) of this section shall be declared in accordance with § 501.4 of this chapter.

(3) The presence of the color additive in salmonid fish that have been fed feeds containing paracoccus pigment shall be declared in accordance with §§ 101.22(b), (c), and (k)(2), and 101.100(a)(2) of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore, batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: November 5, 2009.

Leslye M. Fraser,

Director, Office of Regulations, Policy and Social Sciences, Center for Food Safety and Applied Nutrition.

[FR Doc. E9–27394 Filed 11–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 239

[DOD–2009–OS–0090]

RIN 0790–AI58

Homeowners Assistance Program—Application Processing

AGENCY: Under Secretary of Defense for Acquisition, Technology, and Logistics, Office of the Deputy Under Secretary of Defense (Installations and Environment), DoD.

ACTION: Interim final rule; extension of comment period.

SUMMARY: On September 30, 2009, DoD published an interim final rule implementing the Homeowners Assistance Program (HAP), with an effective date of September 30, 2009 (74 FR 50109–50115). This notice is being published to invite additional public comment on the interim final rule. Any timely public comments received will be considered and any changes to the final rule will be published in the **Federal Register.** The public comment period is being extended for 60 days.

DATES: The effective date of the HAP interim final rule remains September 30, 2009. Additional comments must be received on or before January 15, 2010.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by either 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, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or RIN 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://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Deanna Buchner, (703) 602–4353.

Dated: November 9, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–27373 Filed 11–13–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Marine Corps Base Hawaii, Kaneohe Bay, Island of Oahu, HI

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending the regulations at 33 CFR 334.1380 for the existing danger zone in the vicinity of Kaneohe Bay, Hawaii. The amendment reflects the current operational and safety procedures at the Ulupau Crater Weapons Training Range and highlights a change in the hours that weapons firing may occur. The amendment also expands the boundaries of the existing danger zone. These regulations are necessary to protect the public from potentially hazardous conditions which may exist as a result from use of the areas by the United States Marine Corps.

DATES: *Effective date:* December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or by e-mail at *david.b.olson@usace.army.mil*, or Ms. Susan A. Meyer, Corps of Engineers, Honolulu District, Regulatory Branch, at 808–438–2137 or by e-mail at *susan.a.meyer@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the danger zone regulations at

33 CFR 334.1380 to reflect current operational and safety procedures at the Ulupau Crater Weapons Training Range, Marine Corps Base Hawaii (MCBH), Kaneohe Bay, Island of Oahu, Hawaii and highlight a change in the hours that weapons firing may occur. The amendment also provides more detailed times, dates, and extents of restrictions. The dimensions of the danger zone have increased, from the original distance of 3,900 yards from a point on Mokapu Peninsula to 3.8 nautical miles from that same point.

The proposed rule was published in the August 31, 2007, issue of the **Federal Register** (72 FR 50303) with the docket number COE–2007–0027 and approximately 23 comments were received from 13 commenters. One commenter said that a draft Environmental Impact Report should have been available for public comment at the same time as the proposed rule. Two other commenters requested a copy of the draft EA for review and comment. Another commenter requested clarification on the Corps' authority to amend the danger zone and promulgate regulations at 33 CFR part 334. One commenter objected to the expansion of the danger zone on the basis of potential impacts to sensitive marine wildlife and organisms, including existing designated wildlife protected areas. The same commenter requested that submerged lands surrounding the crater be treated with sensitivity and respect based on the view these areas are ceded lands belonging to the Hawaiian monarchy. Three other commenters stated that the coordinates for Point E of the expanded danger zone do not appear to be correct and one of the three commenters interpreted the proposed rule to amend/expand the prohibited area. Lastly, eight commenters expressed no objections to the proposed amendment.

In the August 31, 2007, proposal the Corps made a preliminary determination that the proposed rule does not require the preparation of an Environmental Impact Statement, and that an environmental assessment would be prepared for the final rule. The regulations governing the National Environmental Policy Act (NEPA) do not require draft environmental assessments to be available for public comment. Federal agencies are only required to solicit public comments during the preparation of Environmental Impact Statements. Given the administrative nature of the proposed rule and the substance of the comments received, we have determined that an environmental assessment is the appropriate mechanism for complying with NEPA requirements. Public input on the proposed action was solicited using **Federal Register** noticing and local public noticing. Public comments received in response to the notices were documented and fully considered during final agency decision making.

Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Act of 1918 (40 Stat. 892; 33 U.S.C. 3) grant authority to the Secretary of the Army to establish danger zones and to regulate navigation within them for the protection of life and property.

The danger zone represents a public safety buffer beyond the physical boundaries of the training range to further reduce the safety threat to the boating public. The geographical nature of the crater combined with the use of man-made measures makes the crater secure from unintended projectiles exiting its confines, although a very slight possibility exists that a projectile could ricochet or otherwise be inadvertently fired beyond the confines of the crater. Under current conditions, sensitive wildlife areas, including designated protected areas, are encompassed within the existing boundaries of the danger zone. Since munitions are not intentionally fired into waters surrounding Ulupau Crater and the probability of an unintended projectile exiting the crater is negligible, an expanded danger zone will not incrementally change, modify or otherwise adversely impact sensitive marine species and organisms that inhabit or are supported by the waters and protected areas occurring within the danger zone. Marine resources, including endangered species, migratory shorebirds, and other seabirds that occupy designated protected areas will remain adequately protected by the MCBH under obligations of pre-existing agreements. For similar reasons, submerged lands will not be directly or indirectly adversely affected by the expanded danger zone.

The coordinates for Point E of the danger zone were not correct in the proposed rule, and in the final rule we have eliminated Point E altogether. In the final rule the amended danger zone is defined by a reduced number of coordinates, from six points (Points A, B, C, D, E and the starting point) to four points (Points A, B, C and the starting point). The boundaries of the amended danger zone form a pie-shaped area with an arc having a 3.8 nautical-mile radius at its center point (Point B). When compared to the irregularly shaped area described in the proposed rule, this modified configuration is less problematic to monitor and patrol, and is less complicated for the boating public to interpret and chart. The reduced number of coordinates and minor changes to the configuration simplify the boundaries of the danger zone, but do not appreciably change the overall size of the amended danger zone as it was depicted in the proposed rule. The amended danger zone is defined by three points extending seaward a distance of 3.8 nautical miles between radial lines bearing 357.1° true and 124.9° true, respectively, from a starting point on Mokapu Peninsula at latitude 21° 27′ 11.84″ N, longitude 157° 43′ 53.83″ W. The three seaward points are as follows:

Point A: Latitude 21°30′59.66″ N, Longitude 157°44′05.97″ W
Point B: Latitude 21°29′16.58″ N, Longitude 157°40′30.19″ W
Point C: Latitude 21°25′01.79″ N, Longitude 157°40′33.70″ W

The prohibited area is defined as a 500-yard wide zone within the waters of Kaneohe Bay contiguous with the shoreline of the MCBH, which remains off limits to the public for military security and public safety. While a portion of the amended danger zone overlaps the existing prohibited area, the 500-yard wide prohibited area will not expand or otherwise change as a result of this action.

Procedural Requirements

a. Review Under Executive Order 12866

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The economic impact of the amendment to this danger zone does not have an effect on the public, does not result in a navigational hazard, or interfere with existing waterway traffic. Therefore, this final rule does not have a significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps determined the amendment does not have a significant impact on

the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment was prepared after the public notice period is closed and considered all comments received on the public notice. The environmental assessment may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. Unfunded Mandates Act

This final rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

■ For the reasons stated in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.1380 to read as follows:

§ 334.1380 Marine Corps Base Hawaii (MCBH), Kaneohe Bay, Island of Oahu, Hawaii—Ulupau Crater Weapons Training Range; danger zone.

(a) *The danger zone*. The area within a sector extending seaward a distance of 3.8 nautical miles between radial lines bearing 357.1° true and 124.9° true, respectively, from a starting point on Mokapu Peninsula at latitude 21°27′11.84″ N, longitude 157°43′53.83″ W, and overlapping the existing 500-yard wide prohibited area. The danger zone is defined as a pie-shaped area bounded by the landward starting point on Mokapu Peninsula and the three seaward points forming an arc with a 3.8 nautical-mile radius at its center (Point B) with a radial line bearing 56.9° true. The three seaward points have the following coordinates:

Point A: Latitude 21°30′59.66″ N, Longitude 157°44′05.97″ W

Point B: Latitude 21°29′16.58″ N, Longitude 157°40′30.19″ W

Point C: Latitude 21°25′01.79″ N, Longitude 157°40′33.70″ W

(b) *The regulations*. (1) Weapons firing at the Ulupau Crater Weapons Training Range may occur at any time between 6 a.m. and 11 p.m., Monday through Sunday. Specific dates and hours for weapons firing, along with information regarding onshore warning signals, will be promulgated by the U.S. Coast Guard's Local Notice to Mariners. Information on weapons firing schedules may also be obtained by calling the MCBH Range Manager, AC/S G–3 (telephone number 808–257–8816/17).

(2) Whenever live firing is in progress during daylight hours, two large red triangular warning pennants will be flown at each of two highly visible and widely separated locations on the shore at Ulupau Crater.

(3) Whenever any weapons firing is scheduled and in progress during periods of darkness, flashing red warning beacons will be displayed on the shore at Ulupau Crater.

(4) Boaters will have complete access to the danger zone whenever there is no weapons firing scheduled, which will be indicated by the absence of any warning flags, pennants, or beacons displayed ashore.

(5) The danger zone is not considered safe for boaters whenever weapons firing is in progress. Boaters shall expeditiously vacate the danger zone at best speed and by the most direct route whenever weapons firing is scheduled. Passage of vessels through the danger zone when weapons firing is in progress will be permitted, but boaters shall proceed directly through the area at best speed. Weapons firing will be suspended as long as there is a vessel in the danger zone. Whenever a boater disregards the publicized warning signals that hazardous weapons firing is scheduled, the boater will be personally requested to expeditiously vacate the danger zone by MCBH Kaneohe Bay military personnel utilizing by hailing the vessel on VHF channel 16 or contacting directly by U.S. Navy surface craft.

(6) Observation posts will be manned whenever any weapons firing is scheduled and in progress. Visibility will be sufficient to maintain visual surveillance of the entire danger zone and for an additional distance of 5 miles in all directions whenever weapons firing is in progress.

(c) *The enforcing agency*. The regulations shall be enforced by the Commanding Officer, MCB Hawaii, Kaneohe Bay and such agencies as he/she may designate.

Dated: November 5, 2009.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. E9–27486 Filed 11–13–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Restricted Areas at Cape Canaveral Air Force Station, Patrick AFB, FL

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Correcting amendments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) published a document in the **Federal Register** on July 23, 2009 (74 FR 36400), revising the restricted areas at Cape Canaveral Air Force Station, Patrick Air Force Base (AFB), Florida. The revision included the establishment of a restricted area within the waters of the Atlantic Ocean offshore of the Cape Canaveral Air Force Station. The regulation included information regarding the boundaries of the new restricted area, including a reference to the offshore (eastern) boundary as being 1.5 miles offshore of the mean high water line. The final rule did not reference the type of mile unit to be used for the boundary line of the restricted area. The intent was to use nautical miles as the unit type. Since the use of nautical miles changes the coordinates for the northeast and southeast corner points of the restricted area, we are also correcting those coordinates. This document corrects the final regulation by revising this section.

DATES: *Effective date:* November 16, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr. Jon Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division at 904–232–1680.

SUPPLEMENTARY INFORMATION: On July 23, 2009 (74 FR 36400), the Corps published a document in the **Federal Register** establishing a new restricted area at Cape Canaveral Air Force Station, Patrick AFB, Florida. Section 334.595(a) of the final rule did not specify the type of mile unit to use to define the area. Nautical miles are to be used to define this restricted area. Since the use of nautical miles changes the coordinates for the northeast and southeast corner points of this restricted

area, we are also correcting those coordinates. In § 334.595(a) the coordinates of the northeast and southeast corner points of the restricted area are latitude 28°35.716′ N, longitude 80°32.938′ W and latitude 28°24.187′ N, longitude 80°33.443′ W, respectively.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

■ Accordingly, 33 CFR part 334 is corrected by making the following correcting amendments:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise paragraph (a) of § 334.595 to read as follows:

§ 334.595 Atlantic Ocean off Cape Canaveral; 45th Space Wing, Cape Canaveral Air Force Station, FL.; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, contiguous to the area offshore of Cape Canaveral Air Force Station, Florida. The area is bounded by a line connecting the following coordinates: Commencing from the shoreline at the northwest portion of the area, at latitude 28°35.008′ N, longitude 80°34.448′ W, thence directly to latitude 28°35.716′ N, longitude 80°32.938′ W, thence following the mean high water line at a distance of 1.5 nautical miles offshore proceed southerly to a point at latitude 28°24.187′ N, longitude 80°33.443′ W, thence proceeding westerly to terminate at a point on the shoreline at latitude 28°24.69′ N, longitude 80°35.05′ W.

* * * * *

Dated: November 5, 2009.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. E9–27487 Filed 11–13–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA–2009–0007]

RIN 1660–AA01

Criminal and Civil Penalties Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is adopting as final, without substantive change, a proposed rule that increases the maximum civil monetary penalty under the Robert T. Stafford Disaster Relief and Emergency Assistance Act from $5,000 to $5,500. The Federal Civil Penalties Inflation Adjustment Act of 1990 mandates this increase.

DATES: This final rule is effective December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Erin McMunigal, Assistant Chief Counsel for Regulation & Policy, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (phone) 202–646–4097, or (e-mail) *Erin.McMunigal@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Emergency Management Agency (FEMA) is adopting as final, without substantive change, a proposed rule that increases the maximum civil penalty under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5157(d), (''Stafford Act''), from $5,000 to $5,500. This increase is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990. Public Law 101–410, 104 Stat. 890 (Oct. 5, 1990), 28 U.S.C. 2461, note, (''Adjustment Act'') as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, sec. 31001, 110 Stat. 1321–373 (1996), as amended, Public Law 105–362, tit. XIII, sec. 1301(a), 112 Stat. 3293 (Nov. 10, 1998).

The Adjustment Act, as amended, requires each Federal agency to adjust by regulation the civil monetary penalties within its jurisdiction. FEMA's civil penalties are mandated by section 314(d) of the Stafford Act, which provides, ''any individual who knowingly violates any order or regulation under this Act shall be subject to a civil penalty of not more than $5000 for each violation.'' 42 U.S.C. 5157(d). This provision is implemented in FEMA's regulations at 44 CFR 206.14(d), promulgated in 1990. 55 FR 2288 (Jan. 23, 1990).

The Adjustment Act directs agencies to make the first such adjustment by October 23, 1996, and then at least once every four years thereafter. The Adjustment Act provides a cost-of-living adjustment formula and requires agencies to use this formula in recalculating the penalties. The formula reflects changes in the Department of Labor's Consumer Price Index of all-urban consumers (CPI) in the years between adjustments. The Adjustment Act also establishes a staged method for rounding the calculated increase, and states that the first such increase of a civil monetary penalty may not exceed 10 percent of the penalty. A civil penalty is to be initially adjusted by the lesser of the Adjustment Act's calculation or 10 percent of the current penalty.

Since the promulgation of 44 CFR 206.14(d), the CPI has increased by nearly 80 percent. However, this final rule is FEMA's first adjustment of its civil penalty regulations since the passage of the Adjustment Act. As described above, the first increase may not exceed 10 percent of the original penalty amount. The original penalty amount was $5,000, as set out in the Stafford Act and FEMA regulations, making the maximum allowable increase $500. Thus, properly adjusted, the maximum civil penalty under section 314(d) of the Stafford Act and 44 CFR 206.14(d) will be $5,500.

II. Discussion of Public Comments

FEMA published a Notice of Proposed Rulemaking on February 10, 1997. 62 FR 5957. FEMA received no substantive public comments.

III. Regulatory Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct 4. 1993), a ''significant regulatory action'' is subject to Office of Management and Budget (OMB) review and the requirements of Executive Order 12866. This rule, increasing the Stafford Act's civil monetary penalty by $500, is not a significant regulatory action, and has not been reviewed by OMB.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, FEMA has considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. FEMA certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities, because it will only affect those persons who knowingly violate regulations issued under the Stafford Act.

C. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. This rule will not have the requisite economic impact and is not a discretionary regulatory action, so further analysis under the Unfunded Mandates Reform Act is not necessary.

D. Executive Order 13132, Federalism

This rule will 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. It will not preempt any State laws. In accordance with Section 6 of Executive Order 13132, FEMA determines that this rule will not have federalism implications sufficient to warrant the preparation of a federalism impact statement.

E. National Environmental Policy Act

FEMA's regulations implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* at 44 CFR 10.8(d)(2), list the categories of actions that have no significant effect on the human environment and are therefore categorically excluded from the preparation of environmental impact statements and environmental assessments. Specifically, FEMA is not required to prepare such statements and assessments under 44 CFR 10.8(d)(2)(ii) for the preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions, or, under 44 CFR 10.8(d)(2)(iv) for actions to enforce Federal, State, or local codes, standards, or regulations. Since this rulemaking action will not have a significant effect on the human environment, it is categorically excluded from further NEPA review, and no environmental impact assessment has been prepared.

F. Executive Order 12898, Environmental Justice

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires Federal agencies to consider the ''disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations'' to ensure that the programs do not ''exclude persons (including populations) from participating in or getting the benefits of, or subject them to discrimination under such programs, policies, and activities.'' This rule does not impact human health or the environment or discriminate according to race, color, or national origin because it uniformly increases the civil penalty of the Stafford Act in accordance with a statutory mandate. Therefore, the requirements of Executive Order 12898 do not apply to this rule.

G. Congressional Review of Agency Rulemaking

FEMA has complied with the Congressional Review of Agency Rulemaking Act, Public Law 104–121 sec. 801, 110 Stat. 847, 868 (1996), (''Congressional Review Act''), by sending this final rule to the Congress and to the Government Accountability Office. Since this rule is not a ''major rule'' within the meaning of the Congressional Review Act, the rule becomes effective without a Comptroller General's report or an extended time for Congressional review.

H. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501–20, is designed to minimize the burden of collecting and distributing information on any organization or individual affected by legislation. Implementing this final rule does not entail the collecting or distributing of information for the purposes of the Paperwork Reduction Act.

I. Executive Order 12630, Taking of Private Property

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

J. Executive Order 12988, Civil Justice Reform

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

K. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Federal Emergency Management Agency amends 44 CFR part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

■ 1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. Revise § 206.14, paragraph (d) to read as follows:

§ 206.14 Criminal and civil penalties.

* * * * *

(d) *Civil penalty.* Any individual who knowingly violates any order or regulation shall be subject to a civil penalty of not more than $5,500 for each violation.

Dated: November 5, 2009.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–27358 Filed 11–13–09; 8:45 am]

BILLING CODE 9111–21–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2266; MB Docket No. 09–83; RM–11532]

FM Table of Allotments, Dubois, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Lorenz E. Proietti, allots FM Channel 242C2 at Dubois, Wyoming, as that community's first transmission service. Channel 242C2 can be allotted at Dubois, Wyoming, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.0 km (3.8 miles) southwest of Dubois at the following reference coordinates: 43–29–59 North Latitude and 109–41–17 West Longitude.

DATES: Effective December 16, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket 09–83, adopted October 21, 2009, and released October 23, 2009. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, *http://www.bcpiweb.com*.

This document does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4). The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of Allotments under Wyoming, is amended by adding Dubois, Channel 242C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–27367 Filed 11–13–09; 8:45 am]

BILLING CODE 6712–01–S

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3009 and 3052

[Docket No. DHS–2009–0017]

RIN 1601–AA55

Prohibition on Federal Protective Service Guard Services Contracts With Business Concerns Owned, Controlled, or Operated by an Individual Convicted of a Felony [HSAR Case 2009–001]

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is issuing a final rule to amend the Homeland Security Acquisition Regulation (HSAR) to establish guidelines under which DHS will prohibit awards of Federal Protective Service (FPS) contract for guard services to a business concern that is owned, controlled, or operated by an individual who has been convicted of a serious felony. The rule implements the provisions of the Federal Protective Service Guard Contracting Reform Act of 2008.

DATES: *Effective date:* December 16, 2009.

Applicability: DHS contracting officers shall insert the clause at (HSAR) 48 CFR 3052.209–76 in solicitations for Federal Protective Service guard services issued on or after the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, Senior Procurement Analyst, at (202) 447–5307 for clarification of content.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Protective Service Guard Contracting Reform Act of 2008, Public Law 110–356, 122 Stat. 3996 (Oct. 8, 2008), required DHS to promulgate regulations establishing guidelines for the prohibition of awards of FPS contracts for guard services to any business concern that is owned, controlled, or operated by an individual who has been convicted of a serious felony (as determined by DHS). This final rule implements the prohibition; identifies which felonies are serious and may prohibit a business concern from being awarded a contract; requires contractors to provide information regarding any felony convictions when submitting bids or proposals; provides guidelines for the contracting officer to assess present responsibility, mitigating factors, and the risk associated with the previous conviction; and allows the contracting officer to award a contract under certain circumstances, notwithstanding the conviction of a serious felony of an individual who owns, controls, or operates the contractor.

II. Discussion and Analysis

A. Final Rule

The final rule expressly defines certain types of felonies as serious felonies, and generally defines as serious felonies those which cast doubt on the integrity or business ethics of a business concern or are of a nature that is inconsistent with the mission of FPS. Serious felonies, committed by an individual who owns, controls, or operates the contractor, will normally prohibit a business concern from being awarded an FPS contract for guard services. Serious felonies include, but are not limited to, felony convictions for: fraud arising out of a contract with the federal, state or local government; bribery, graft or a conflict of interest; threatened or actual harm to a government official, family member or government property; crimes of

violence; threat to national security; commercial bribery; counterfeiting; forgery; obstruction of justice, perjury or subornation of perjury, or bribery of a witness; felony for attempt to evade or defeat Federal tax or felony for willful failure to collect or pay over Federal tax; trafficking in illegal drugs, alcohol, firearms, explosives or other weapons; immigration violations and any other felony that involves dishonesty, fraud, deceit, misrepresentation, or deliberate violence; that reflects adversely on the individual's honesty, trustworthiness, or fitness to own, control, or operate a business concern; that casts doubt on the integrity or business ethics of the business concern; or is of a nature that is inconsistent with the mission of FPS.

The HSAR clause requires offerors to disclose whether they are or are not a business concern owned, controlled or operated by an individual convicted of a felony. If an offeror represents that it is owned, controlled or operated by an individual convicted of a felony, it will need to submit a new award request with its bid or proposal or a previously approved award request. The award request will provide the basis for the request and details regarding the felony conviction.

The clause also provides that after award of an Indefinite Delivery/Indefinite Quantity Contract, Blanket Purchase Agreement, or other contractual instrument that may result in the issuance of task orders, calls, or exercise of options to extend the term of the contract, the contractor must provide notice of a felony conviction of any individual who owns, controls, or operates the business concern. The contracting officer will review the conviction and make a new determination of eligibility prior to the issuance of any task order, call, or exercise of any option.

The rule allows the contracting officer to review the basis for the award request and assess the risk associated with the felony conviction. If the contracting officer assesses the felony as not serious, as contemplated by the Act and this regulation, he or she may award a contract for guard services to a business concern owned, controlled or operated by an individual convicted of a felony. Prior to such an award, the contracting officer must prepare and submit a recommendation to the Head of the Contracting Activity. The Head of the Contracting Activity must approve both the contracting officer's recommendation and the award request.

B. Changes Adopted in the Final Rule

As a result of public comments received on the proposed rule, the final rule:

Revises the definition of ''felony'' for consistency with the definition of ''individual'' as used in (HSAR) 48 CFR 3009.171–2. The rule defines ''individual'' to include corporations, partnerships, or other entities as well as persons. If the definition did not include business organizations, DHS could not apply the prohibition to the felonious conduct of a business entity that owns controls or operates the business concern, which conduct would otherwise disqualify the business concern if committed by a natural person who owns controls or operates it. DHS believes that a business entity that owns, operates, or controls the business concern, as well as the business concern itself, should be held to the same standard as natural persons who own, operate, or control the business concern.

Revises 3009.171–5 to provide more structured and objective guidance to contracting officers. The rule more clearly defines serious felonies that will prohibit a business concern from being awarded a contract for FPS guard services. The list of serious felonies is expanded with offenses determined by DHS to be serious felonies.

Revises (HSAR) 48 CFR 3009.171–6 and –7 to clearly establish that a referral of an award from the Contracting Officer to the HCA will include the Contracting Officer's determination and a recommendation for approval to promote consistency and objectivity. The HCA must document his or her decision in writing.

As a result of further internal review, DHS is also making the following changes in the final rule. The final rule:

Adds ''exercise'' of an option to (HSAR) 48 CFR 3009.171–3(b) for accuracy and clarity in describing the contractual instruments subject to reporting during performance.

Revises (HSAR) 48 CFR 3009.171–7(b) for consistency with (HSAR) 48 CFR 3009.171–6, which provides that contracting officers may consider the circumstances underlying a serious felony. In (HSAR) 48 CFR 3052.209–72, replaces references to ''this regulation'' with the appropriate HSAR reference as the clause requires specific citations when incorporated into a contract.

Replaces references to the ''HCA for U.S. Immigration and Customs Enforcement'' with ''HCA.'' This provides authority to the cognizant HCA while removing the need for a rule change in the event of a future reorganization or restructuring.

Amends the Privacy Notice in (HSAR) 48 CFR 3052.209–72(e) to delete the reference to a Privacy Act system of records notice as DHS will not maintain a system of records on reported felonies. It also adds instructions on how to submit corrections to or remove information on individuals both prior to and after contract award.

C. Response to Comments Received on the Notice of Proposed Rulemaking

DHS published a proposed rule to implement the Federal Protective Service Guard Contracting Reform Act in the **Federal Register** on March 17, 2009. 74 FR 11512. DHS received three comments on the proposed rule. All three supported the rule's prohibition on awarding contracts for FPS guard services to convicted felons. One offered recommendations to extend the rule's coverage and another recommended that DHS not rely on self-reporting and that the rule further restrict contracting officers' discretion.

1. Extending the Rule's Coverage

Comment: One comment recommended that the proposed regulation be amended and expanded to include the denial of contracts, as well as the termination of existing contracts, to security contractors that have a history of violating Federal laws, including but not limited to the National Labor Relations Act and Service Contract Act.

Response: DHS does not agree. This rule implements the specific statutory prohibition established under the Federal Protective Service Guard Contracting Reform Act of 2008. The Federal Acquisition Regulation (FAR) implements statutes and policy which provide protection against contracting with entities that violate Federal laws. FAR Parts 3 and 9 in particular address requirements for determining contractor responsibility and procedures for suspension and debarment. The Department of Labor enforces and administers laws governing legally-mandated wages and working conditions, including suspending and/or debarring entities who violate these laws.

2. Reliance on Self-Reporting

Comment: One comment advised that it is unreasonable to depend on self-reporting to protect the Federal government from fraud. First, the comment notes that the rule requires a principal to report only convictions that fall in certain categories. Because the categories set forth are broad, an individual may unnecessarily disclose a conviction that is not covered.

Unnecessary disclosure does not advance contract fraud prevention and may infringe upon the civil liberties of the individual making the disclosure. Second, the comment notes that an individual who intends to engage in dishonest actions after receiving a Federal contract will not disclose a prior criminal conviction. Thus, the rule may serve to actually impair the honest while promoting the nefarious.

Response: DHS considered the advantages and disadvantages of relying on self-reporting. DHS had contemplated requiring business concerns to submit a list of all owners, controllers or operators with their proposal and DHS would then conduct criminal background checks on each of these individuals prior to contract award rather than relying on a self-reporting system. DHS elected not to require criminal records checks as a condition of award based upon related precedents and privacy and information collection concerns.

Numerous statutes and regulations intended to increase responsibility and integrity among government contractors do not require criminal background checks. For example, 10 U.S.C. 2408 prohibits felons from being employed in positions of responsibility on Department of Defense (DOD) contracts. The implementing Defense Federal Acquisition Regulation (DFARS 252.203–7001) makes no provision for criminal background checks in order to verify whether these individuals have been convicted of a fraud or felony arising out of a contract with the DOD, but rather relies on a similar self-reporting process. The Close the Contractor Fraud Loophole Act, Public Law 110–252, Tit. VI, ch. 1, 122 Stat. 2386 (June 30, 2008), requires contractors to disclose, in connection with the award, performance, or closeout of a contract or any subcontract, whether a principal, employee, agent, or subcontractor of the contractor has committed a violation of certain Federal criminal laws. The implementing Federal Acquisition Regulation (FAR 52.203–13) relies solely on the contractor to self-report such violations. The regulation does not require criminal background checks on principals, employees, agents or subcontractors in order to verify whether any of these individuals have violated Federal criminal law. Similarly, FAR 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, requires a contractor to report certain criminal convictions. The government procurement community does not normally conduct criminal records checks to verify the accuracy of such contractor certifications. However, a false certification under this FAR clause, as well as under the instant HSAR representation, would constitute a criminal violation of 18 U.S.C. 1001 and, potentially, a violation of 18 U.S.C. 287.

DHS further considered Privacy Act, 5 U.S.C. 552a, and Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* requirements. In order to conduct a criminal background check, DHS must collect personally identifiable information (i.e., name and date of birth). To independently verify whether an offeror is owned, controlled or operated by a felon, DHS would need to collect this information on all covered individuals for an offeror. This would cause DHS to collect and retain personally identifiable information on many individuals with no felony conviction. To protect the integrity of the procurement process and prevent the release of pre-decisional information, DHS would need to require all offerors to submit this information. If DHS were to request this information only from the apparent successful offeror, that would constitute an early release of the award decision and could compromise the integrity of the procurement process. However, DHS would use only the information provided by the apparent successful offeror to conduct a criminal background check (i.e., DHS would not conduct checks on all owners, controllers, and operators identified in all proposals received). The information collection burden on small businesses and other entities seeking to provide guard services would increase without concomitant value or benefits to the government. The burden on the government for protecting this information would also increase, along with the risk of inadvertent disclosure.

DHS recognizes that some dishonest individuals may choose not to disclose a prior criminal conviction. The federal procurement system relies upon several other mechanisms which further protect the integrity of the procurement process. As noted above, false representations and claims may be prosecuted criminally, and may constitute a violation of the civil False Claims Act, 31 U.S.C. 3729 *et seq.* Also, felons may be precluded from participating in the federal procurement process by virtue of individual plea agreements or sentencing restrictions. Additionally, an agency may suspend or debar felons from receiving federal contracts for a specified period of time pursuant to FAR Part 9.4. The government has controls at the contracting officer level to determine the present responsibility of such vendors. For example, pursuant to FAR 9.104–1, a contractor must have a satisfactory record of integrity and business ethics to be awarded a contract. As part of this present responsibility determination, the contracting officer must check the Excluded Parties List Systems (EPLS) to verify that a vendor is not suspended, proposed for debarment, or barred from receiving federal contract awards. The FAR also imposes certain reporting requirements on potential contractors. Under FAR 52.209–5, a vendor must certify as to whether the vendor or any of its principals has been convicted of certain civil judgments. If the vendor certifies that a covered conviction occurred, the contracting officer would examine it further to determine the vendor's present responsibility.

DHS notes the commenter's concerns that the rule requires only convictions falling into certain categories to be reported and that the categories of felonies in the proposed rule were so broad that individuals might disclose unnecessary information, which would not advance contract fraud prevention and may infringe upon the civil liberties of the individual making the disclosure. The rule requires business concerns to report all felony convictions for owners, controllers or operators, but it precludes contract award only for serious felony convictions. The business concern does not have discretion to determine that a felony is not serious, and so avoid reporting it. DHS is responsible for determining whether a reported felony casts doubt on the integrity or business ethics of the business concern, or is of a nature that is inconsistent with the mission of FPS.

The privacy risks associated with the disclosure of this information were carefully assessed. The privacy risk is mitigated to the extent that the felony conviction information requested is limited to the minimum amount of information necessary for the contracting officer, in consultation with other authorized agents, to determine whether the conviction is serious under the regulation, and should prohibit the vendor from receiving a contract award. In addition, submission of the felony conviction information by the individual is voluntary; however, failure to provide it may result in denial of an award to the business concern. The business concern will be responsible for collecting the required felony information from the individual convicted of the felony, and to provide the individual with a written privacy notice detailing the authority and purpose of the collection, how the

information will be shared, and that providing the information is voluntary. Finally, DHS did not receive any comments from individuals or guard service companies contesting the disclosure of this information.

To mitigate the concern over unnecessary disclosure, the final rule establishes a more structured definition of who owns, operates, or controls a business concern. This definition provides more effective guidance to assist offerors in determining which individuals are subject to the disclosure requirement.

In respect to the broad scope of the felonies identified in the proposed rule, this final rule establishes more structured and objective guidance for contracting officers. The rule more clearly defines serious felonies that will prohibit a business concern from being awarded a contract for FPS guard services.

DHS recognizes that a formal criminal background check of each individual with sufficient ownership interest in a contractor or offeror would provide a greater degree of certainty, but DHS believes that the risk and rewards assessment does not support the expenditure necessary for this function. For example, the individuals with sufficient ownership interest do not acquire any independent security access or authority from the contract and run a substantial risk of criminal penalties from falsely omitting a criminal felony conviction. This is particularly true because criminal convictions are matters of public record.

3. Scope of Contracting Officers' Discretion

Comment: One comment noted that the rule gives inappropriate discretion to contracting officers. The contracting officer is asked to examine the nature and circumstances surrounding a conviction and whether the individual has accepted full responsibility for their past misconduct without appropriate training. Further, the circumstances that serve as mitigating factors are not delineated, allowing different contracting officers to arrive at vastly different decisions based on similar facts and leading to unfair results. A contracting officer's exercise of discretion should be limited to judging the external merits of the guard services offered, the capacity of the company to perform those services, and the business' record of integrity.

Response: DHS recognizes that contracting officers may not have the training or law enforcement expertise to evaluate all felony conviction information and determine on their own whether a particular felony constitutes a serious felony that would preclude a firm from being awarded a FPS guard service contract. DHS intends to issue an internal policy directive which will further delineate the process contracting officers will use to review an award request and determine whether the associated felony conviction is serious enough to prohibit contract award. As part of the risk assessment process, the contracting officer may request the assistance of offices in DHS which possess the requisite subject matter expertise to properly evaluate felony conviction information and assist the contracting officer in determining whether the felony conviction is considered serious enough, by nature or circumstance, to prohibit contract award. Just as a contracting officer must evaluate information related to other criminal violations in determining present responsibility, or the Suspending Official or Debarring Official evaluates such information when making suspension and debarment decisions, it is equally important that a contracting officer maintain decision-making authority as to eligibility for award under this new HSAR clause. DHS contracting officers are able to make appropriate business decisions based on the particular facts of each given situation, consulting with appropriate subject matter experts where necessary.

The final rule does make two changes that will promote objective and consistent application of the circumstances that serve as mitigating factors. As noted earlier, the rule provides more structured and objective guidance by more clearly defining serious felonies that will prohibit a business concern from being awarded a contract for FPS guard services. The final rule requires the contracting officer to provide the Head of the Contracting Activity the contracting officer's determination that a reported felony is either not serious or that circumstances are such that commission of the serious felony no longer calls into question the individual or business concern's integrity or business ethics or ability to perform consistently with FPS' mission, together with a recommendation for approval of the award request. The HCA must make a final written decision on the award approval request. This provides more centralized review and decision-making, promoting consistency and objectivity. The discretion provided to the contracting officer and the HCA is consistent with the Act's provision that the regulations ''provide guidelines for the contracting officer to assess present responsibility, mitigating factors, and the risk associated with the previous conviction, and allow the contracting officer to award a contract under certain circumstances.'' This provision was intended to avoid an overly broad prohibition which could disproportionately affect small businesses. The discretion that it provides is consistent with other acquisition statutes and regulations. It recognizes the need for fairness and due process. DHS believes the controls established in the rule will allow DHS to apply this discretion in a responsible manner to meet our agency needs.

III. Regulatory Requirements

A. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993), as amended. The rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

Comment: DHS received a single comment regarding the estimate of the economic impact of the rule on small businesses. One commenter was disturbed by a perception that approximately ten percent of the FPS contracts are held by security contractors owned or operated by a convicted felon.

Response: This ten percent figure is not meant to indicate that FPS believes that ten percent of current guard service providers are operated by convicted felons. Ten percent is simply an educated estimate given the wide range of offenses that constitute a felony and the fact that felony offenses can remain on an individual's record for a lifetime. DHS received no comments that disputed the ten percent estimate or proposed an alternative.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, DHS is required to determine whether a rule will have a significant economic impact on a substantial number of small businesses. At this time, it is unknown how many guard service providers are owned, controlled or operated by an individual convicted of a felony. Without actual statistics or the ability to quickly and efficiently gather this information, DHS was required to provide an educated estimate as to the number of firms that would be impacted by the proposed rule.

The rule not only requires vendors to notify FPS of felony convictions at the time of proposal submission, but vendors are also required to notify FPS

if an individual that owns, controls or operates the business concern is convicted of a felony during actual contract performance. To date, FPS has had experience with a single guard service provider known to be owned, controlled and operated by an individual convicted of a felony. However, given that FPS has no other verifiable data to support an estimate, coupled with the facts that felonies can consist of any offense ranging from a violent offense to driving under the influence, and that a felony charge can remain on an individual's record for a lifetime, DHS believes this rule may impact a few firms. The figure of ten percent, although a high estimate, is believed to be reasonable to support the determination that the rule will not have a significant economic impact on a substantial number of small businesses.

As a result, DHS certifies that the final rule amending (HSAR) 48 CFR 3009.1 and 3052.209 will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The factual basis for certification is presented in the following analysis of the economic effects of the proposed rule. Application of the rule is limited to offerors or contractors providing guard services under the FPS contract security guard program. Further, for these offerors and contractors, the economic impact of the rule is not expected to be substantial. Currently, FPS administers a contract inventory consisting of approximately 125 contract vehicles for guard services with 46 different guard service vendors. These FPS contracts provide 14,000 contract guards to protect 9,000 federal facilities. In FY2008, DHS issued approximately 47 solicitations for guard services and awarded 55 contracts. For each solicitation issued, an average of 10 offerors responded.

The 46 vendors that provide guard services to FPS represent less than one percent of the industry. In 2005, the Small Business Administration, based on Bureau of Census data, estimated that there were 4,853 firms in Security Guards and Patrol Services Industry, North American Industry Classification System (NAICS) 561612. See e.g. Small Business Administration, *Small Business Size Standards: Security Guards and Patrol Services*, 70 FR 68368 (Nov. 10, 2005) (proposed rule); id. 71 FR 37490 (June 30, 2006) (final rule). The Central Contractor Registration database (www.ccr.gov) currently lists 5,952 active records for NAICS 561612. Of these, 4,822, or 81 percent are identified as small businesses.

Only those vendors that represent that they are owned, controlled, or operated by an individual convicted of a felony will need to submit a new award request with their bid or proposal or a previously approved award request. After award, a contractor will need to disclose felony convictions that occur during the term of the contract. DHS estimates that this may affect no more than ten percent of offerors (fewer than 50 per year—47 solicitations × 10 offerors per solicitation × .1) and ten percent of contractors (fewer than five per year—46 guard service vendors × .1)). The award request must provide the basis for the request and details regarding the felony conviction to include: The age of the conviction, nature and circumstances surrounding the conviction, protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct, whether the individual has made full restitution for the felony and whether the individual has accepted responsibility for past misconduct resulting in the felony conviction. Under certain circumstances, the contracting officer may still award a contract for guard services to a business concern owned, controlled or operated by an individual convicted of a felony. Only those felonies that cast doubt on the integrity or business ethics of the business concern or are of a nature that are inconsistent with the mission of FPS will prohibit a business concern from being awarded an FPS contract for guard services. Serious felony convictions include, but are not limited to: Fraud arising out of a contract with the federal, state or local government, bribery, graft or a conflict of interest, threatened or actual harm to a government official, family member or government property, crimes of violence, threat to national security, commercial bribery, counterfeiting, forgery, obstruction of justice, perjury or subornation of perjury, or bribery of a witness, felony for attempt to evade or defeat Federal tax or felony for willful failure to collect or pay over Federal tax. In summary, DHS anticipates that the economic impact of this rule will not exceed:

Solicitations:

Respondents making the representation: 470.

Responses per respondent: 1.

Total annual responses: 470.

Preparation hours per response: .25.

Subtotal response burden hours: 117.5.

Respondents submitting an award request: 47.

Responses per respondent: 1.

Total annual responses: 47.

Preparation hours per response: 2.

Subtotal response burden hours: 94.

Total response burden hours: 211.5.

Average Hourly Rate ($72 × 36.35 percent overheard): $98.

Estimated cost: $20,763.

Active Contracts:

Respondents submitting an award request: 13.

Responses per respondent: 1.

Total annual responses: 13.

Preparation hours per response: 2.

Total response burden hours: 26.

Average Hourly Rate ($72 × 36.35 percent overheard): $98.

Estimated cost: $2,552.

Therefore, DHS has not performed either an initial or a final regulatory flexibility analysis.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* applies because the rule contains information collection requirements.

(1) The clause at 3052.209–76 requires each offeror for FPS contract guard services to disclose whether it is owned, controlled or operated by an individual convicted of a felony. The representation is necessary to evaluate the offeror's responsibility related to performing the required services in accordance with Public Law 110–356. An offeror that is owned, controlled or operated by a felon must also submit an award request with supporting documentation. DHS has determined that the burden for the responses is within the total estimated burden for information requested from prospective contractors in response to agency-issued solicitations approved under OMB Control No. 1600–0005. Based on FY2008 statistics, DHS has approximately 470 respondents to solicitations for contract guard services per year (47 solicitations with an average of 10 offers per solicitation), all of whom will make the representation. Of these, DHS estimates that 10 percent (47 per year) may submit award requests. DHS estimates the total burden on offerors to be 211.5 hours. This represents .1 percent of the total burden hours under OMB Control No. 1600–0005.

(2) The clause at 3052.209–76 requires the contractor to report felony convictions after award of an Indefinite Delivery/Indefinite Quantity Contract, Blanket Purchase Agreement, or other contractual instrument that may result in the issuance of task orders, calls, or exercise of options to extend the term of the contract. The notice applies to a felony conviction of any individual who

owns, controls, or operates the business concern. DHS has determined that the burden for the responses is within the total estimated burden for information requested from contractors in response to OMB Control No. 1600–0003 for information requested from contractors as part of post-contract award administration by DHS acquisition officials. DHS has 125 contracts for FPS guard services. Of these, DHS estimates that 10 percent will also submit a notice of felony conviction. DHS estimates the total burden on contractors to be 25 hours. This represents less than .001 percent of the total burden hours under OMB Control No. 1600–0003.

List of Subjects in 48 CFR Parts 3009 and 3052

Government procurement.

Richard K. Gunderson,

Acting Chief Procurement Officer, Department of Homeland Security.

■ Accordingly, DHS amends 48 CFR parts 3009 and 3052 as follows:

■ 1. The authority citation for 48 CFR parts 3009 and 3052 continues to read as follows:

Authority: 41 U.S.C. 418b(a) and (b).

PART 3009—CONTRACTOR QUALIFICATIONS

Subpart 3009.1—Responsible Prospective Contractors

■ 2. Amend Subpart 3009.1 by—

■ a. Redesignating section 3009.104–70 as section 3009.170 and redesignating subsections 3009.104–71 through 3009.104–75 as subsections 3009.170–1 through 3009.170–5, respectively; and

■ b. Adding section 3009.171 to read as follows:

3009.171 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.

3009.171–1 General.
3009.171–2 Definitions.
3009.171–3 Determination of eligibility for award of FPS guard service contracts.
3009.171–4 Determination of ownership, control, or operation.
3009.171–5 Serious felonies prohibiting award.
3009.171–6 Guidelines for contracting officers.
3009.171–7 Contract award approval procedures for contractors with felony convictions.
3009.171–8 Ineligible contractors.
3009.171–9 Clause.

3009.171 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.

3009.171–1 General.

Except as provided in (HSAR) 48 CFR 3009.171–6 and 3009.171–7, Department of Homeland Security (DHS) contracting officers shall not enter into a contract for guard services under the Federal Protective Service (FPS) guard services program with any business concern owned, controlled, or operated by an individual convicted of a serious felony.

3009.171–2 Definitions.

As used in this subpart—

Business concern means a commercial enterprise and the people who constitute it.

Felony means an offense which, if committed by a natural person, is punishable by death or imprisonment for a term exceeding one year.

Convicted of a felony means any conviction of a felony in violation of state or federal criminal statutes, including the Uniform Code of Military Justice, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

Individual means any person, corporation, partnership, or other entity with a legally independent status.

3009.171–3 Determination of eligibility for award of FPS guard service contracts.

(a) Contracting officers shall make a determination of eligibility for award of FPS guard service contracts upon identification of the apparent successful offeror as a result of a solicitation for offers.

(b) Contractors shall be required to immediately notify the contracting officer in writing upon any felony conviction of personnel who own, control or operate a business concern as defined in (HSAR) 48 CFR 3009.171–4 at any time during the duration of an Indefinite Delivery/Indefinite Quantity Contract, Blanket Purchase Agreements, or other contractual instrument that may result in the issuance of task orders or calls, or exercise of an option or options to extend the term of a contract. Upon notification of a felony conviction, the contracting officer shall review and make a new determination of eligibility prior to the issuance of any task order, call or exercise of an option.

3009.171–4 Determination of ownership, control, or operation.

(a) Whether an individual owns, controls, or operates a business concern is determined on the specific facts of the case, with reference to the factors identified in paragraphs (b) and (c) of this subsection. Prior to contract award, such individual must provide any additional documentation to the contracting officer upon the contracting officer's request for the agency's use in determining ownership, control, or operation. The refusal to provide or to timely provide such documentation may serve as grounds for the contracting officer to refuse making contract award to the business concern.

(b) Any financial, voting, operational, or employment interest in the business concern of a spouse, child, or other family member of, or person sharing a household with, the individual will be imputed to the individual in determining whether and the extent to which the individual owns, controls, or operates the business concern.

(c) An individual owns, controls, or operates a business concern by fulfilling or holding the following types of roles or interests with respect to the business concern:

(1) Director or officer, including incumbents of boards and offices that perform duties ordinarily performed by a chairman or member of a board of directors, a secretary, treasurer, president, a vice president, or other chief official of a business concern, including Chief Financial Officer, Chief Operating Officer, or Chief contracting official.

(2) Officials of comparable function and status to those described in paragraph (c)(1) of this subsection as exist in partnerships of all kind and other business organizations, including sole proprietorships.

(3) A general partner in a general or limited partnership.

(4) An individual with a limited partnership interest of 25% or more.

(5) An individual that has the:

(i) Power to vote, directly or indirectly, 25% or more interest in any class of voting stock of the business concern;

(ii) Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or

(iii) Ability to exercise a controlling influence over the business concern's management, policies, or decision making.

(d) Generally, the existence of one or more of the roles or interests set forth in paragraph (c) of this subsection, including roles or interests attributed to the individual, will be sufficient to determine that the individual owns, controls or operates the business concern. However, specific facts of the case may warrant a different

determination by the contracting officer, where, for example, an indicator in paragraph (c) of this subsection, in light of all of the facts and circumstances, suggests that the individual lacks sufficient authority or autonomy to exert authority customarily associated with ownership or control or the assertion of operational prerogatives (e.g. the individual is one of twenty on a board of directors, plays no other role, and holds no other interest). Conversely, ownership, control, or the ability to operate the business concern, if it exists in fact, can be reflected by other roles or interests.

3009.171–5 Serious felonies prohibiting award.

(a) Only serious felony convictions will prohibit a business concern from being awarded a contract for FPS guard services. Serious felonies that will prohibit contract award are any felonies that involve dishonesty, fraud, deceit, misrepresentation, or deliberate violence; that reflect adversely on the individual's honesty, trustworthiness, or fitness to own, control, or operate a business concern; that cast doubt on the integrity or business ethics of the business concern; or are of a nature that is inconsistent with the mission of FPS, including, without limitation, those felonies listed in paragraphs (b)(1) through (12) of this subsection.

(b) The following is a list of offenses determined by DHS to be serious felonies for purposes of the Federal Protective Service Guard Reform Act of 2008. Except as provided in (HSAR) 48 CFR 3009.171–7(f), award of a contract for FPS guard services will not be made to any business that is owned, controlled, or operated by an individual who has been convicted of a felony involving:

(1) Fraud of any type, including those arising out of a procurement contract, cooperative agreement, grant or other assistance relationship with the federal, state or local government, as well as, without limitation, embezzlement, fraudulent conversion, false claims or statements, kickbacks, misappropriations of property, unfair or deceptive trade practices, or restraint of trade;

(2) Bribery, graft, or a conflict of interest;

(3) Threatened or actual harm to a government official or family member;

(4) Threatened or actual harm to government property;

(5) A crime of violence;

(6) A threat to national security;

(7) Commercial bribery, counterfeiting, or forgery;

(8) Obstruction of justice, perjury or subornation of perjury, or bribery of a witness;

(9) An attempt to evade or defeat Federal tax;

(10) Willful failure to collect or pay over Federal tax;

(11) Trafficking in illegal drugs, alcohol, firearms, explosives, or other weapons;

(12) Immigration violations (e.g., 8 U.S.C. 1324, 1324c, 1326); and

(13) Any other felony that involves dishonesty, fraud, deceit, misrepresentation, or deliberate violence; that reflects adversely on the individual's honesty, trustworthiness, or fitness to own, control, or operate a business concern; that casts doubt on the integrity or business ethics of the business concern; or is of a nature that is inconsistent with the mission of FPS.

3009.171–6 Guidelines for contracting officers.

(a) In accordance with FAR Subpart 9.4 (48 CFR subpart 9.4), a contracting officer may not award a contract for FPS guard services to any business concern that is suspended, debarred or proposed for debarment unless the agency head determines that there is a compelling reason for such action.

(b) The contracting officer shall not award a contract for FPS guard services to any business concern that is otherwise nonresponsible on the same contract.

(c) The contracting officer shall not award an FPS guard services contract to any business concern that is owned, controlled or operated by an individual convicted of a serious felony as defined in (HSAR) 48 CFR 3009.171–5 except as provided in under (HSAR) 48 CFR 3009.171–7.

(d) In considering an award request under (HSAR) 48 CFR 3009.171–7, the contracting officer may not review the fact of the conviction itself, but may consider any information provided by the individual or business concern, and any information known to the contracting officer. Factors that the contracting officer may consider include, but are not limited to:

(1) The age of the conviction.

(2) The nature and circumstances surrounding the conviction.

(3) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct.

(4) Whether the individual has made full restitution for the felony.

(5) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

3009.171–7 Contract award approval procedures for contractors with felony convictions.

(a) The HCA has sole discretion to approve a request to permit award of a contract for FPS guard services to a business concern owned, controlled, or operated by an individual convicted of a felony, for any reason permitted by this regulation. This authority is not delegable.

(b) A business concern owned, operated or controlled by an individual convicted of any felony (including a serious felony) may submit an award request to the contracting officer. The basis for such request shall be that the subject felony is not a serious felony as defined by this regulation; that such individual does not or no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer poses the contract risk the Act and this regulation were designed to guard against. The business concern shall bear the burden of proof for award requests.

(c) A copy of the award approval request with supporting documentation or a previously approved award request shall be attached with the bid or proposal.

(d) An award approval request shall contain the basis for the request, including, at a minimum, the following information:

(1) Name and date of birth of individual convicted of a felony;

(2) A full description of which roles or interests indicate that the individual owns, controls, or operates, or may own control or operate the business concern;

(3) Date sentenced;

(4) Statute/Charge;

(5) Docket/Case Number;

(6) Court/Jurisdiction;

(7) The nature and circumstances surrounding the conviction;

(8) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct;

(9) Whether the individual has made full restitution for the felony; and

(10) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

(e) If the contracting officer is unable to affirmatively determine that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171–5; that such individual no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and would be consistent with the

mission of FPS, then the contracting officer shall deny the award approval request and not forward such request to the HCA.

(f) For a felony that meets any of the following conditions, the contracting officer shall refer the award request, with a copy of the contracting officer's determination, to the HCA with a recommendation for approval:

(1) The subject felony is not a serious felony as defined by this regulation;

(2) The convicted individual does not or no longer owns, controls or operates the business concern; or

(3) The commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of the FPS.

(g) The HCA shall make a final written decision on the award approval request following referral and after any necessary additional inquiry.

3009.171–8 Ineligible contractors.

Any business concern determined to be ineligible for award under (HSAR) 48 CFR 3009.171–5 to 3009.171–7 shall be ineligible to receive a contract for guard services under the FPS guard program until such time as:

(a) The concern demonstrates that it has addressed and resolved the issues that resulted in the determination of ineligibility, and

(b) The HCA approves an award request under (HSAR) 48 CFR 3009.171–7.

3009.171–9 Clause.

Insert the clause (HSAR) 48 CFR 3052.209–76, Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony, in all solicitations and contracts for FPS guard services.

PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 3052.209 by adding section 3052.209–76 to read as follows:

3052.209–76 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.

As prescribed at (HSAR) 48 CFR 3009.171–9, insert the following clause:

PROHIBITION ON FEDERAL PROTECTIVE SERVICE GUARD SERVICES CONTRACTS WITH BUSINESS CONCERNS OWNED, CONTROLLED, OR OPERATED BY AN INDIVIDUAL CONVICTED OF A FELONY (AUG 2009)

(a) Prohibitions. Section 2 of the Federal Protective Service Guard Contracting Reform Act of 2008, Public Law 110–356, generally prohibits the Department of Homeland Security from entering into a contract for guard services under the Federal Protective Service (FPS) guard services program with any business concern owned, controlled, or operated by an individual convicted of a serious felony.

(b) Definitions. As used in this clause:

Business concern means a commercial enterprise and the people who constitute it.

Felony means an offense which, if committed by a natural person, would be punishable by death or imprisonment for a term exceeding one year.

Individual means any person, corporation, partnership, or other entity with a legally independent status.

Convicted of a felony means any conviction of a felony in violation of state or federal criminal statutes, including the Uniform Code of Military Justice, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

(c) A business concern that is owned, controlled, or operated by an individual who has been convicted of any felony, and that wishes to submit a bid, proposal, or other offer on a solicitation to obtain a FPS contract for guard services, must submit with its offer an award request as specified in paragraph (d) of this clause.

(1) A financial, voting, operational, or employment interest in the business concern of the individual's spouse, child, or other family member, or person with whom the individual shares his or her household, will be imputed to the individual in determining whether the individual owns, controls, or operates a business concern.

(2) An individual owns, controls, or operates a business concern by fulfilling or holding the following types of roles or interests with respect to the business concern:

(i) Director or officer, including incumbents of boards and offices that perform duties ordinarily performed by a chairman or member of a board of directors, a secretary, treasurer, president, a vice president, or other chief official of a business concern, including Chief Financial Officer, Chief Operating Officer, or Chief contracting official.

(ii) Officials of comparable function and status to those described in paragraph (c)(2)(i) of this clause as exist in partnerships of all kind and other business organizations, including sole proprietorships.

(iii) A general partner in a general or limited partnership.

(iv) An individual with a limited partnership interest of 25% or more.

(v) An individual that has the:

(A) Power to vote, directly or indirectly, 25% or more interest in any class of voting stock of the business concern;

Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or

(B) Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or

(C) Ability to exercise a controlling influence over the business concern's management and policies.

(3) Generally, the existence of one or more of the roles or interests set forth in paragraph (c)(2) of this clause, including roles or interests attributed to the individual, will be sufficient to determine that the individual owns, controls or operates the business concern. However, specific facts of the case may warrant a different determination by Government in light of all of the facts and circumstances. Conversely, ownership, control, or the ability to operate the business concern, if it exists in fact, can be reflected by other roles or interests, and the offeror or contractor should reveal the existence of felony convictions if there is doubt as to whether the individual owns, controls or operates the business concern.

(d) Award request.

(1) A business concern owned, operated or controlled by an individual convicted of any felony may submit an award request to the Contracting Officer. The basis for such request shall be either that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171–5; that such individual no longer owns, controls or operates the business concern; or that commission of the serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of FPS. The business concern shall bear the burden of proof for award requests.

(2) If the Contracting Officer in his or her sole discretion, is unable to affirmatively determine that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171–5 or that such individual no longer owns, controls or operates the business concern, then the Contracting Officer shall deny the award request.

(3) The Head of the Contracting Activity has sole discretion to approve an award request.

(4) A copy of the award request with supporting documentation or a copy of a previously approved award request shall be attached with the bid or proposal.

(5) An award request shall contain the basis for the request (i.e., that the subject felony is not a serious felony as defined by this regulation; that the convicted individual does not or no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of FPS). The award request shall contain, at a minimum, the following information:

(i) Name and Date of Birth of Individual Convicted of a felony.

(ii) A full description of which roles or interests indicate that the individual owns, controls, or operates or may own control or operate the business concern.

(iii) Date sentenced.

(iv) Statute/Charge.

(v) Docket/Case Number.

(vi) Court/Jurisdiction.

(vii) The nature and circumstances surrounding the conviction.

(viii) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct.

(ix) Whether the individual has made full restitution for the felony.

(x) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

(6) Upon the request of the Contracting Officer, and prior to contract award, in addition to information described in paragraph (d)(5) of this clause, the business concern must provide such other documentation as is requested by the Contracting Officer to use in determining and evaluating ownership, control, or operation; the nature of the felonies committed; and such other information as is needed to make a decision on whether award should be made to the offeror under the Federal Protective Service Guard Contracting Reform Act of 2008. The refusal to timely provide such documentation may serve as grounds to preclude contract award.

(e)(1) *Privacy Statement.* The offeror shall provide the following statement to any individual whose information will be submitted in an award request pursuant to (d)(5) and (6) of this clause.

(2) *Privacy Notice.* The collection of this information is authorized by the Federal Protective Service Guard Contracting Reform Act of 2008 (Pub. L. 110–356) and Department of Homeland Security (DHS) implementing regulations at Homeland Security Acquisition Regulation (HSAR) 48 CFR 3009.171. This information is being collected to determine whether an individual that owns, controls, or operates the business concern submitting this offer has been convicted of a felony that would disqualify the offeror from receiving an award. This information will be used by and disclosed to DHS personnel and contractors or other agents who require this information to determine whether an award request should be approved or denied. Additionally, DHS may share this personal information with the U.S. Justice Department and other Federal and State agencies for collection, enforcement, investigatory, or litigation purposes, or as otherwise authorized. Submission of this information by the individual is voluntary, however, failure to provide it may result in denial of an award to the offeror. Individuals who wish to correct inaccurate information in or to remove their information from an offer that has been submitted should contact the business concern submitting the offer and request correction. Should individuals seek to correct inaccurate information or remove their information from an offer that has been submitted in response to a solicitation for FPS guard services prior to contract award, an authorized representative of the business concern submitting the offer must contact the contracting officer of record and request that the firm's offer be formally withdrawn or submit a correction to the award request. After contract award, it is recommended that an authorized representative of the business concern that submitted the inaccurate or erroneous information contact the contracting officer of record. The contracting officer will handle such requests on a case by case basis.

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:

__It is not a business concern owned, controlled, or operated by an individual convicted of a felony.

__It is a business concern owned, controlled, or operated by an individual convicted of a felony, and has submitted an award request pursuant to paragraph (d) of this clause.

(g) If an award request is applied for, the offeror shall attach the request with supporting documentation, to the bid or proposal. The supporting documentation may include copies of prior award requests granted to the offeror.

(h) The notification in this paragraph applies if this is an indefinite delivery/indefinite quantity contract, blanket purchase agreement, or other contractual instrument that may result in the issuance of task orders, calls or option to extend the terms of a contract. The Contractor must immediately notify the Contracting Officer in writing upon any felony conviction of personnel who own, control or operate a business concern as defined in paragraph (c) of this clause at any time during the performance of this contract. Upon notification of a felony conviction the Contracting Officer will review and make a new determination of eligibility prior to the issuance of any task order, call or exercise of an option.

(End of clause)

[FR Doc. E9–27330 Filed 11–13–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 090218194–91045–02]

RIN 0648–AX65

List of Fisheries for 2010

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2010, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2010 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: This final rule is effective January 1, 2010.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices. Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this final rule, should be submitted in writing to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or to David Rostker, OMB, by fax to 202–395–7285 or by email to *David__Rostker@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Melissa Andersen, Office of Protected Resources, 301–713–2322; David Gouveia, Northeast Region, 978–281–9280; Anne Ney, Southeast Region, 727–551–5758; Elizabeth Petras, Southwest Region, 562–980–3238; Brent Norberg, Northwest Region, 206–526–6733; Bridget Mansfield, Alaska Region, 907–586–7642; Lisa Van Atta, Pacific Islands Region, 808–944–2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the LOF and the Marine Mammal Authorization Program, including registration procedures and forms, current and past LOFs, observer requirements, and marine mammal injury/mortality reporting forms and submittal procedures, may be obtained at: *http://www.nmfs.noaa.gov/pr/interactions/lof/* or from any NMFS Regional Office at the addresses listed below:

NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Anne Ney;

NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Lyle Enriquez;

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Protected Resources Division;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West

9th Street, Juneau, AK 99802, Attn: Bridget Mansfield; or

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI 96814–4700, Attn: Lisa Van Atta.

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SAR) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How Does NMFS Determine in which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its Optimum Sustainable Population. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III (unless those fisheries interact with other stock(s) in which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2, Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the proposed rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Because fisheries are categorized on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically categorized on the LOF at its highest level of classification (e.g., a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II).

Other Criteria That May Be Considered

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury of mortality is ''occasional'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2). Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published.

How Does NMFS Determine which Species and Stocks are Included as Incidentally Killed or Injured in a Fishery?

The LOF includes a list of marine mammal species and stocks incidentally killed or injured in each commercial fishery. To determine which species and stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. NMFS also reviews other sources of new information, including observer data, stranding data, and fisher self-reports.

When reliable information and sufficient levels of observer coverage are available, the most recent five years of data are used to determine whether a species or stock should be added to, or deleted from, the list of species and stocks incidentally killed or injured in each commercial fishery. In the absence of reliable information on the level of mortality or injury of a marine mammal stock, or insufficient observer data, NMFS will determine whether a species or stock should be added to, or deleted from, the list by considering other factors such as: changes in gear used, increases or decreases in fishing effort, increases or decreases in the level of observer coverage, and/or changes in fishery management that are expected to lead to decreases in interactions with a given marine mammal stock (such as a fishery management plan (FMP) or a take reduction plan (TRP)). NMFS will provide case-specific justification in the LOF for changes to the list of species and stocks incidentally killed or injured.

How Does NMFS Determine the Level of Observer Coverage in a Fishery?

Data obtained from observers and the level of observer coverage are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. The best available information on the level of observer coverage, and the spatial and temporal distribution of observed marine mammal interactions, is presented in the SARs. Starting with the 2005 SARs, each SAR includes an appendix with detailed descriptions of each Category I and II fishery in the LOF, including observer coverage. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the

MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Information presented in the SARs' appendices includes: level of observer coverage, target species, levels of fishing effort, spatial and temporal distribution of fishing effort, characteristics of fishing gear and operations, management and regulations, and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resource's website at: *http://www.nmfs.noaa.gov/pr/sars/*. Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: *http://www.st.nmfs.gov/st4/nop/*.

How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This final rule includes three tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; Table 3 lists all U.S.-authorized fisheries on the high seas. A fourth table, Table 4, lists all fisheries managed under applicable take reduction plans or teams.

Are High Seas Fisheries Included on the LOF?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Sea Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (e.g., trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of the fishery operating within U.S. waters (listed in Table 1 or 2). In these fisheries, a single vessel may set both within the U.S. Exclusive Economic Zone (EEZ) and on the high seas during a single fishing trip. NMFS designates those fisheries in Tables 1, 2, and 3 by an ''*'' after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters do not necessarily represent additional fishers that are not accounted for in Tables 1 and 2. Many fishers holding these permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Table 1 and 2.

HSFCA permits are valid for five years, during which time FMPs can change. Therefore, some fishers may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008).

Are Treaty Tribal Fisheries Included on the LOF?

In the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995) NMFS concluded that treaty tribal fisheries are conducted under the authority of the Indian treaties; the MMPA's requirements in section 118 do not apply to treaty Indian tribal fisheries. NMFS explained this decision in the final rule stating (the remaining text in this paragraph is quoted direction from the final rule at 60 FR 45086, August 30, 1995), '' the rights to fish and hunt are already secured separately for Northwest tribes pursuant to their treaties with the United States. NMFS reviewed the relationship of the Northwest Indian treaties to the MMPA and did not find clear evidence that Congress intended to abrogate treaty Indian rights. Section 14 of the Amendments to the MMPA (Public Law No. 103–238) states 'Nothing in this Act, including any amendments to the Marine Mammal Protection Act of 1972 made by this Act -- alters or is intended to alter any treaty between the United States and one or more Indian tribes.' This provision clarifies that existing treaty Indian fishing rights are not affected by the amendments to the MMPA. Therefore, tribal fisheries are conducted under the authority of the Indian treaties rather than the MMPA, and the MMPA's mandatory registration systems do not apply to treaty Indian fishers operating in their usual and accustomed fishing areas. Since inclusion of the treaty Indian fisheries in the LOF would also establish an obligation to obtain an MMPA registration under section 118, NMFS has deleted reference to tribal fisheries in the LOF. The registration requirements for Category I or II fisheries will not apply to treaty Indian tribes.'' (60 FR 45086, August 30, 1995.)

NMFS considered, among other things, the public comments received on the proposed 2010 LOF and the 1994 amendments to the MMPA and accompanying legislative history to re-evaluate its 1995 conclusion to exempt tribal fisheries from the LOF (60 FR 45086, August 30, 1995) should be changed due to *Anderson* v. *Evans*. NMFS determined that *Anderson* v. *Evans* did not alter NMFS' original analysis in the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995); therefore, the inclusion of tribal fisheries on the LOF at this time is not warranted. NMFS will continue to work on a government-to-government basis with the affected treaty tribal governments to gather data on injuries and mortalities of marine mammals incidental to tribal fisheries. Additional information on NMFS' decision to continue to exclude tribal fisheries from the LOF is provided below in the response to comments 1–5 in the section ''Comments and Responses.''

Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to be registered with NMFS and obtain a marine mammal authorization to lawfully take a non-endangered and non-threatened marine mammal incidental to commercial fishing. Owners of vessels or gear engaged in a Category III fishery are not required to be registered with NMFS or obtain a marine mammal authorization.

What is the Registration Process?

NMFS has integrated the MMPA registration process, known as the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials directly under the MMAP. In the Pacific Islands, Southwest, Northwest, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate; in the Northeast and Southeast Regions, NMFS will issue vessel or gear owners notification of

registry and directions on obtaining an authorization certificate. The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals fishing in Category I and II fisheries for which no state or Federal permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

How Do I Receive My Authorization Certificate and Injury/Mortality Reporting Forms?

All vessel or gear owners that participate in Pacific Islands, Southwest, Northwest, or Alaska regional fisheries will receive their authorization certificates and/or injury/mortality reporting forms via U.S. mail, or with their state or Federal license at the time of renewal. Vessel or gear owners participating in the Northeast and Southeast Regional Integrated Registration Program will receive their authorization certificates as follows:

1. Northeast Region vessel or gear owners participating in Category I or II fisheries for which a state or Federal permit is required may receive their authorization certificate and/or injury/mortality reporting form by contacting the Northeast Regional Office at 978–281–9328 or by visiting the Northeast Regional Office Web site (*http://www.nero.noaa.gov/prot_res/mmap/certificate.html*) and following instructions for printing the necessary documents.

2. Southeast Region vessel or gear owners participating in Category I or II fisheries for which a state or Federal permit is required will receive notice of registry and may receive their authorization certificate and/or injury/mortality reporting form by contacting the Southeast Regional Office at 727–551–5758 or by visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/pr.htm*) and following instructions for printing the necessary documents.

How Do I Renew My Registration Under the MMPA?

Vessel or gear owners that participate in Pacific Islands, Southwest, or Alaska regional fisheries are automatically renewed and should receive an authorization certificate by January 1 of each new year. Vessel or gear owners in Washington and Oregon fisheries receive authorization with each renewed state fishing license, the timing of which varies based on target species. Vessel or gear owners who participate in these regions and have not received authorization certificates by January 1 or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **ADDRESSES**).

Vessel or gear owners participating in Southeast or Northeast regional fisheries may receive an authorization certificate by calling the relevant NMFS Regional Office or visiting the relevant NMFS Regional Office Web site (see ''How Do I Receive My Authorization Certificate and Injury/Mortality Reporting Forms'').

Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any marine mammal that ingests fishing gear or any marine mammal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Injury/mortality reporting forms and instructions for submitting forms to NMFS can be downloaded from: *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf*. Reporting requirements and procedures can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. MMPA Section 118 states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. However, observer requirements will not be exempted for U.S. Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)) or vessels operating in North Carolina fisheries observed under the Alternative Platform Program. Observer requirements can be found in 50 CFR 229.7.

Am I Required to Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable TRP regulations. Table 4 in this final rule provides a list of fisheries affected by take reduction teams and plans. Take reduction plan regulations can be found at 50 CFR 229.30 through 229.36.

Sources of Information Reviewed for the Final 2010 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the SARs for all observed fisheries to determine whether changes in fishery classification were warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by three regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, fishery management plans, and ESA documents.

The final LOF for 2010 was based, among other things, on information provided in the NEPA and ESA documents analyzing authorized high seas fisheries, and the final SARs for 1996 (63 FR 60, January 2, 1998), 2001 (67 FR 10671, March 8, 2002), 2002 (68 FR 17920, April 14, 2003), 2003 (69 FR 54262, September 8, 2004), 2004 (70 FR 35397, June 20, 2005), 2005 (71 FR

26340, May 4, 2006), 2006 (72 FR 12774, March 19, 2007), 2007 (73 FR 21111, April 18, 2008), and 2008 (74 FR 19530, April 29, 2009). The SARs are available at *http://www.nmfs.noaa.gov/pr/sars/*.

Fishery Descriptions

Beginning with the final 2008 LOF (72 FR 66048, November 27, 2007), NMFS describes each Category I and II fishery on the LOF. Below, NMFS describes the fisheries classified as Category I or II fisheries on the 2010 LOF that were not classified as such on a previous LOF (and therefore have not yet been defined on the LOF). Additional details for Category I and II fisheries operating in U.S. waters are included in the SARs, FMPs, and TRPs, or through state agencies. Additional details for Category I and II fisheries operating on the high seas are included in various FMPs, NEPA, or ESA documents.

American Samoa Longline Fishery

The Category II ''American Samoa longline'' fishery operates in waters around American Samoa targeting tuna (mainly albacore, also skipjack, yellowfin and bigeye). Wahoo, sharks, billfish, and other miscellaneous pelagic species are also caught, with most of the sharks and billfish released. In 2000, the ''American Samoa longline'' fishery began to expand rapidly with the influx of large (more than 50 ft (15.2 m) overall length) conventional monohull vessels, similar to the type used in the Hawaii-based longline fisheries. Vessels over 50 ft (15.2 m) may set 1,500 2,500 hooks and have a greater fishing range and capacity for storing fish (8 40 metric tons). The fleet reached a peak of 66 vessels in 2001, and set a peak of almost 7,000 sets in 2002.

The rapid expansion of longline fishing effort within the EEZ waters around American Samoa prompted the Western Pacific Fishery Management Council (WPFMC) to develop a limited entry system for the fishery, implemented by NMFS in 2005. Under the limited access program, NMFS issued a total of 60 initial longline limited entry permits in 2005 to qualified candidates, spread among 4 vessel size classes (72 FR 10711, March 9, 2007): 22 permits issued in Class A (less than or equal to 40 ft (12.2 m) length); 5 in Class B (40–50 ft (12.2–15.2 m)); 12 in Class C (50–70 ft (15.2–21.3 m)); and 21 in Class D (more than 70 ft (21.3 m)). The limited entry program regulations cap the maximum number of permits to the 60 initial permits issued. Permits may be transferred, upgraded, and renewed. In 2008, the American Samoa longline fishery had 28 active vessels. Observers were first placed on American Samoa longline vessels in April 2006 to monitor protected species interactions, with observer coverage averaging approximately 6–8 percent each year.

Under the limited entry program, vessel operators must submit Federal longline logbooks, vessels over 40 ft (12.2 m) must carry observers if requested by NMFS, and vessels over 50 ft (15.2 m) must have an operational vessel monitoring system. In addition, vessel owners and operators of vessels registered to an American Samoa longline limited entry permit must attend a protected species workshop annually, carry and use dip nets, line clippers, and bolt cutters, and follow handling, resuscitation, and release requirements for incidentally hooked or entangled sea turtles (70 FR 69282, November 15, 2005). There are existing regulations intended to mitigate sea turtle incidental hookings, and in 2009 the WPFMC recommended additional measures be implemented to minimize interactions with green sea turtles, including modifications to gear to place hooks below 100 m (328 ft) depth and to increase observer coverage (WPFMC 144th Meeting, March 23–26, 2009). Current regulations include a prohibition on U.S. vessels greater than 50 ft (15.2 m) in length from using longline gear within 50 nmi around the islands of American Samoa. American Samoa longline fishery regulations can be found at 50 CFR 665.36–38.

HI Shortline Fishery

The Category II ''HI shortline'' fishery is a small-scale system operating off the State of HI, and targeting bigeye tuna (Thunnus obesus) or the lustrous pomfret (Eumigistes illustris). This fishery was developed to target these fish species when they concentrate over the summit of Cross Seamount (290 km (180 mi) south of the State of HI). The gear style is designed specifically to target the aggregating fish species over seamount structures. The primary gear type used is a horizontal main line (monofilament) less than 1 nmi long, and includes two baskets of approximately 50 hooks each. The gear is set before dawn and has a short soak time, with the gear retrieved about two hours after it is set. This fishery has no seasonal component and may operate year-round. There are no specific fishing permits issued for this fishery. However, all persons with a State of Hawaii Commercial Marine License (CML) may participate in any fishery, including the ''HI shortline'' fishery. Of those persons possessing CMLs, shortline participation has changed from 5 to 11 vessels during 2003–2008. From 2003–2008, there was an average of 135,757 pounds (lbs) of fish landed each year. In 2008 alone, 104,152 lbs of fish were landed. Currently, there is no reporting system in place to document potential marine mammal interactions in this fishery. However, there are anecdotal reports of interactions off the north side of the island of Maui, but the species and extent of interactions are unknown.

Comments and Responses

NMFS received 11 comment letters on the proposed 2010 LOF (74 FR 27739, June 11, 2009). Comments were received from the California Department of Fish and Game, California Wetfish Producers Association, Center for Biological Diversity, Columbia River Inter-Tribal Fish Commission, Eighteen Western Washington Indian Tribes, Garden State Seafood Association, Hawaii Longline Association, Makah Tribal Council, Makah Tribe's marine mammal biologist, Marine Conservation Alliance, and Marine Mammal Commission. Comments on issues outside the scope of the LOF were noted, but are not responded to in this final rule.

Comments on Tribal Treaty Fisheries Inclusion on the 2010 LOF

During the public comment phase for the then-proposed 2009 LOF, NMFS received a comment requesting the 2009 LOF be amended to include tribal fisheries. The commenter stated that ''in light of the subsequent holding of the Ninth Circuit in *Anderson* v. *Evans*...finding that the MMPA applies to the Makah application to the gray whale hunt NMFS' 1995 conclusion exempting tribal fisheries from the LOF and the Section 118 authorization process is no longer valid'' (73 FR 73039, December 1, 2008; comment/response 4). In response to this 2009 LOF comment, NMFS included a request for public comment in the proposed 2010 LOF (74 FR 27739, June 11, 2009) on whether or not to include treaty tribal fisheries on future LOFs. Below, NMFS summarizes each comment received on the 2010 proposed LOF related to tribal fisheries and issues one response following the collective tribal fisheries comments.

Comment 1: The Center for Biological Diversity (CBD) reiterated a comment on the 2009 LOF (73 FR 73039, December 1, 2008; comment/response 4), noting that in an earlier decision the Ninth Circuit Court of Appeals determined that MMPA requirements applied to the Makah application to hunt gray whales (*Anderson* v. *Evans*, 371 F.3d 475 (9th Cir. 2004)). The CBD stated that the decision demonstrated that MMPA requirements can be harmonized with

treaty rights. Therefore, the CBD encouraged NMFS to move forward with determining how best to harmonize tribal fishing and treaty rights with MMPA requirements such that all fisheries operating in US waters are included in the LOF and categorized as I, II or III, as appropriate.

Comment 2: The Marine Mammal Commission (MMC) recommended NMFS (1) include tribal fisheries on the LOF, (2) revise its regulations implementing section 118 (e.g., 50 C.F.R. § 229.1 (d)) to clarify that treaty tribal fisheries are subject to the requirements of the MMPA, including section 118, and (3) begin working with the affected tribes to integrate the registration process with existing licensing or permitting systems if it appears that some tribal fisheries will be listed as category I or category II fisheries.

Comment 3: The Makah Tribe presented data indicating that tribal incidental takes of marine mammals do not present any conservation issues notwithstanding NMFS' 1995 decision to exclude treaty tribal fisheries from the LOF. The Makah Tribe compiled data regarding incidental take in its treaty fisheries and requires that all mortality or injury resulting from an incidental take, required in Makah Tribal regulations to be reported to the Tribe, and submits an annual report to NMFS. Records of these reports have been kept since the Tribe hired a marine mammal biologist in 2003. In general the rate of incidental take of marine mammals during fishing operations is low. From 2003–2009, the Makah Tribal fisheries incidentally killed 12 harbor seals (1 in 2003, 6 in 2004, 4 in 2008, 1 in 2009), 1 Dall's porpoise (in 2004), 5 harbor porpoise (2 in 2004, 3 in 2008), 6 unknown small odontocetes (in 2005), 1 Steller sea lion (in 2008), 1 unidentified sea lion (in 2008), and 2 sea otters (in 2004). One unidentified whale and one gray whale were successfully released after entanglement (in 2005 and 2009, respectively).

The Makah tribe noted that, despite a long history of interactions between Makah Tribal fishers and marine mammals, these animals remain abundant, as indicated by NMFS' SARs. Observed take of marine mammals by the Makah Tribe's treaty fisheries is well below PBR for each stock. In addition, populations of marine mammal stocks which are most likely to interact with Makah tribal fisheries have either increased or remained stable since the MMPA was amended in 1994 and NMFS determined that treaty tribal fisheries would not be included in the LOF: CA sea lions have increased 5.6 percent/year since the 1970s; WA/OR stock of harbor seals has been stable since 1996; Inland WA stock of harbor seals has been stable at carrying capacity since 1994; Outer coast stock of harbor porpoises has been stable; Inland WA stock of harbor porpoise 2002 population estimate is three times more than the 1996 estimate; Eastern stock of Steller sea lions increased 3.1 percent/year (with regional variances); and WA stock of sea otters increased at 8 percent/year.

Comment 4A: The Makah Indian Tribe outlined three arguments (comments 4A, 4B, and 4C in this final rule) for the continued exclusion of treaty tribal fisheries from the LOF, based on its experience with the MMPA and as a party to *Anderson* v. *Evans*. The Makah Indian Tribe also joined and fully incorporated the comments in the joint tribal letter submitted by eighteen other Western Washington treaty tribes (see comments 5A, 5B, and 5C in this final rule) asserting that NMFS' 1995 rule interpreting the relationship between the Tribe's treaty-reserved right to take fish and Section 118 of the MMPA has not been affected by *Anderson* v. *Evans* and continues to be valid. Therefore, the Makah Tribe recommends that NMFS reaffirm its 1995 decision that treaty tribal fisheries are not subject to the MMPA's mandatory registration and that treaty tribal fisheries will not be included in the LOF.

The Makah Tribe's first argument for the continued exclusion of treaty tribal fisheries from the LOF was that the proper reading of the 1994 MMPA Amendments' treaty savings clause (section 14) protects incidental take of marine mammals by tribal fishers because the treaty fishing right, as understood by the Indian signatories, includes the right to take marine mammals incidental to tribal fisheries.

Comment 4B: The Makah Tribe's second argument for the continued exclusion of treaty Tribal fisheries from the LOF was that *Anderson* v. *Evans* was wrongly decided (a position which the United States has also repeatedly expressed) and, therefore, should not be extended to the LOF. The Makah Tribe asserted that although *Anderson* v. *Evans* addressed direct take of marine mammals such as the Makah gray whale hunt, by its own terms it does not apply to the question of incidental take in treaty tribal fisheries. Therefore, the Makah Tribe believed NMFS need not and should not extend the decision to the issues of mandatory registration and inclusion in the LOF.

During the *Anderson* v. *Evans* case, the United States took the position that the panel opinion was incorrectly based on numerous fundamental errors in reaching its conclusion. In the Makah Tribe's opinion, if NMFS were to extend *Anderson* v. *Evans* to the LOF issue, it would further reinforce the panel's numerous incorrect applications of settled precedent and directly contradict the United States' ongoing disagreement with the case. Moreover, the Makah Tribe concluded that it would substantially undermine the Makah's and other western Washington Tribes' treaty rights notwithstanding their express protection by the 1994 Amendments. The Makah Tribe believed such a decision would contravene Congress's express intent.

Comment 4C: The Makah Tribe's third argument for the continued exclusion of treaty Tribal fisheries from the LOF was that the Makah Tribe does and will continue to work with NMFS to protect marine mammals. The Makah Tribe noted that NMFS' 1995 rule excluding treaty tribal fisheries from the LOF was based in part on the extensive cooperation between the tribes and NMFS in managing tribal fisheries, including their interactions with marine mammals (See 60 FR at 45096, Aug. 30, 1995). The Makah Tribe noted that in the 1995 final rule, NMFS found that tribal self-regulation and cooperation with NMFS were instrumental to the agency achieving its responsibilities to protect marine mammals.

Comment 5A: NMFS received two separate letters, each representing multiple Washington Indian tribes that were similar to each other in the arguments presented. Therefore, the two comments presented in the two letters are summarized together below. The first letter represented the comments of the Columbia River Inter-Tribal Fish Commission (Nez Perce, Umatilla, Warm Springs and Yakama Tribes), the second letter represented the joint comments of eighteen Indian Tribes of western Washington State (Lummi Nation, Quinault Indian Nation, Swinomish Indian Tribal Community, and Nooksack, Tulalip, Suquamish, Squaxin Island, Nisqually, Puyallup, Sauk-Suiattle, Skokomish, Muckleshoot, Port Gamble, Jamestown, Lower Elwha, Upper Skagit, Quileute, and Stillaguamish Indian Tribes), collectively, the ''Tribes.'' The Tribes outlined three arguments (comments 5A, 5B, and 5C in this final rule) asserting that NMFS' 1995 conclusion that treaty fisheries are properly excluded from the LOF (60 FR 45086, August 30, 2009; at 45096) was correct, and remains correct.

The Tribes' first argument was that NMFS' 1995 conclusion remains correct

because the Tribes' rights are reserved by various treaties and the U.S. has broad trust responsibility to the Tribes.

Comment 5B: The Tribes' second argument was that NMFS' 1995 conclusion regarding Tribal fisheries remains correct because it is not affected by the rulings of the Ninth Circuit in *Anderson* v. *Evans*. The Tribes asserted that *Anderson* v. *Evans* involved the Makah Tribe's exercise of its express whaling rights in the Treaty of Neah Bay, and was wholly unrelated to the Makah Tribe's - or any other Tribes' - treaty right to take fish. The Tribes argued that the *Anderson* v. *Evans* court did not address the applicability of the 1994 MMPA amendments to treaty fisheries or the exercise of any other treaty rights, but instead focused solely on the applicability of the MMPA's general take prohibition, which has no Indian treaty savings clause, to the Makah Tribe's gray whale hunt. The Tribes asserted that as a result of the narrow scope of the case, the court did not address - nor did it have any reason to address - the MMPA's provisions governing incidental take of marine mammals in commercial fisheries, much less treaty tribal fisheries. In the Tribes' opinion, because *Anderson* v. *Evans* did not address Section 118 of the Act, the 1994 amendments (including the treaty savings clause) or the 1995 rule, it is inapplicable to the 2010 LOF rulemaking. The Tribes also asserted that the incidental take of marine mammals in treaty fisheries is well within the treaty rights protected by the 1994 treaty savings clause, a statute which must be construed liberally in favor of the Indians.

Comment 5C: The Tribes' third argument was that NMFS' 1995 conclusion regarding Tribal fisheries remains accurate because the Tribes' regulate their fisheries (including interactions with marine mammals) and NMFS retains authority to regulate tribal fisheries should the principle of conservation necessity deem it necessary. In the Tribes' opinion, NMFS need not take the radical step of reversing its 1995 rule with respect to treaty tribal fisheries and the LOF because, as a practical and legal matter, the agency is fully capable of protecting marine mammals under the existing rule. Finally, the Tribes noted that, just as in 1995 when NMFS asserted its authority to regulate tribal fisheries under the treaty rights principle of conservation necessity, NMFS retains that option should the impact of treaty tribal fisheries on certain marine mammal species reach the threshold to apply the conservation necessity principle. Thus, NMFS retains the authority to regulate treaty fisheries under appropriate circumstances.

Response: In the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995) NMFS concluded that treaty tribal fisheries are conducted under the authority of Indian treaties; therefore, the MMPA's requirements in section 118 do not apply to treaty Indian tribal fisheries. NMFS explained this decision in the 1995 final rule stating (the remaining text in this paragraph is quoted directly from the final rule at 60 FR 45086, August 30, 1995), '' the rights to fish and hunt are already secured separately for Northwest tribes pursuant to their treaties with the United States. NMFS reviewed the relationship of the Northwest Indian treaties to the MMPA and did not find clear evidence that Congress intended to abrogate treaty Indian rights. Section 14 of the Amendments to the MMPA (Public Law No. 103–238) states ''Nothing in this Act, including any amendments to the Marine Mammal Protection Act of 1972 made by this Act -- alters or is intended to alter any treaty between the United States and one or more Indian tribes. '' This provision clarifies that existing treaty Indian fishing rights are not affected by the amendments to the MMPA. Therefore, tribal fisheries are conducted under the authority of the Indian treaties rather than the MMPA, and the MMPA's mandatory registration systems do not apply to treaty Indian fishers operating in their usual and accustomed fishing areas. Since inclusion of the treaty Indian fisheries in the LOF would also establish an obligation to obtain an MMPA registration under section 118, NMFS has deleted reference to tribal fisheries in the LOF. The registration requirements for Category I or II fisheries will not apply to treaty Indian tribes.'' (60 FR 45086, August 30, 1995.)

NMFS considered the public comments received on the proposed 2010 LOF, existing Indian treaties providing rights for tribal fisheries, the statutory provisions and context of the MMPA, and the legislative history of the 1994 amendments to the MMPA in evaluating whether the 1995 decision to exempt treaty tribal fisheries from the LOF should be changed due to *Anderson* v. *Evans*, 371 F.3d 475 (9th Cir. 2004). NMFS has determined that the facts and holding of *Anderson* v. *Evans* do not alter NMFS' original analysis in the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995). *Anderson* v. *Evans* applied to directed hunt of marine mammals and not incidental take of marine mammals by fishers. Section 118 of the MMPA specifically regulates incidental take of marine mammals by commercial fishers. The court in *Anderson* v. *Evans* did not address the treaty savings clause, which restricts the application of section 118 in the context of tribal treaty rights. In addition, NMFS continues to adhere to a policy of implementing the Federal trust responsibility by protecting treaty fishing rights of tribes. NMFS also will continue to work closely with the affected tribal governments on a government-to-government basis to gather data on injuries and mortalities of marine mammals incidental to tribal fisheries. In light of the above, NMFS did not include in the 2010 LOF the treaty tribal fisheries where tribal fishers exercise their treaty-protected fishing rights.

Based on the information presented in the final 2008 SARs and provided in Indian Tribal self-reports, there is no indication that any marine mammal bycatch associated with tribal fisheries presents a biological concern for applicable stocks. In the event this becomes an issue, NMFS would consider invoking the treaty-rights principle of ''conservation necessity'' to protect marine mammals.

The 2008 SARs show that nine species have been or are incidentally seriously injured and killed in Pacific Northwest treaty tribe fisheries, though many of these species have not been seriously injured or killed in recent years. All of the takes by tribal fisheries listed in the 2008 SARs are from non-depleted stocks of marine mammals. One take occurring after publication of the 2008 SARs was from a depleted stock. Below is a summary of the information provided in the 2008 SARs as well as information available from tribal self-reporting since publication of the 2008 SARs. Please see the 2008 SARs for more detailed information on these stocks and/or their interactions with treaty tribal fisheries.

(1) California sea lions: Current estimates of annual serious injury or mortality of this stock in tribal fisheries is zero to two animals/year. The stock's PBR level is 8,511.

(2) Harbor seal (OR/WA coast): The Northern WA marine set gillnet (tribal fishery in coastal waters) fishery seriously injured or killed 3 harbor seals in 2000 and 6 in 2004. The PBR for this stock is 1,343 and the minimum total fishery mortality and serious injury is less than 10 percent of the PBR. Therefore, fishery mortality and serious injury appears to be insignificant and approaching a zero mortality and serious injury rate.

(3) Harbor seal (WA inland waters): The Puget Sound treaty and non-treaty sockeye salmon gillnet fishery seriously injured or killed one harbor seal in 1994. The PBR for this stock is 771 and the minimum estimated fishery mortality and serious injury for this stock appears to be less than 10 percent of the PBR. Therefore, fishery mortality and serious injury appears to be insignificant and a approaching zero mortality and serious injury rate.

(4) Harbor Porpoise (Northern CA/Southern OR): One harbor porpoise mortality was documented for the Klamath River tribal salmon gillnet fishery in 1995. The PBR for this stock is 259 and the minimum estimated fishery mortality and serious injury for this stock appears to be less than 10 percent of the PBR. Therefore, fishery mortality and serious injury appears to be insignificant and approaching a zero mortality and serious injury rate.

(5) Harbor Porpoise (OR/WA coast): The Northern WA marine set gillnet (tribal fishery in coastal waters) fishery seriously injured or killed 3 harbor porpoise in 2000. In addition, 2 harbor porpoise (stock unknown) were reported killed in 2004 in a Makah Tribal fishery (Makah Tribe self-reports). Based on the range of the stock and the location of the Makah fisheries, the animals were either part of the OR/WA coast stock or the WA Inland Waters stock. The PBR for this stock is 277 and the minimum estimated fishery mortality and serious injury for this stock appears to be less than 10 percent of the PBR. Therefore, fishery mortality and serious injury appears to be insignificant and approaching zero mortality and serious injury rate.

(6) Harbor Porpoise (WA inland waters): The Puget Sound treaty and non-treaty sockeye salmon gillnet fishery seriously injured or killed one harbor porpoise in 1994. As stated above, 2 harbor porpoise (stock unknown) were reported killed in 2004 in a Makah Tribal fishery (Makah Tribe self-reports). Based on the range of the stock and the location of the Makah fisheries, the animals were either part of the OR/WA coast stock or the WA Inland Waters stock. The PBR for this stock is 63. While the status of the WA Inland Waters stock relative to its Optimum Sustainable Population level and population trends is unknown, the uncorrected estimate of abundance in Washington inland waters was significantly greater in 2002–2003 than in 1996.

(7) Dall's Porpoise (CA/OR/WA): The Puget Sound salmon drift gillnet tribal fishery seriously injured or killed one Dall's porpoise in the period from 2000 to 2004. The PBR for this stock is 318 and the minimum estimated fishery mortality and serious injury for this stock appears to be less than 10 percent of the PBR. Therefore, fishery mortality and serious injury appears to be insignificant and approaching a zero mortality and serious injury rate.

(8) Sea otter (WA): Sea otters (WA) are managed by the U.S. Fish and Wildlife Service. According to the Service's 2008 SAR, the Makah Northern Washington marine set-gillnet fishery seriously injured or killed 11 sea otters over a period of 13 years between 1988 and 2001 (2008 SAR) and 2 sea otters in 2004 (Makah Indian Tribe self-report). The stock has increased at a rate of 8 percent since 1989. The PBR for this stock is 11 per year. The Service was unable to determine whether the level of human-caused mortalities and serious injuries are insignificant and approaching a zero mortality and serious injury rate, based on a lack of information on the level of all sources of human-caused serious injury and mortality of this stock. However, the current population estimate of 1,125 is above the lower end of the Optimum Sustainable Population (60 percent of the maximum carrying capacity for the stock) (2008 SAR).

In addition to the information provided in the 2008 SARs, recent self-reports from the Makah Indian Tribe show additional serious injury and mortality of marine mammal stocks not yet represented in the SARs (see comment 3 above). The Makah Indian Tribe's self-reported data indicate that Makah fisheries interacted with three marine mammal stocks in 2008 and 2009.

(1) In 2009, a gray whale was entangled in a Makah fishery and released alive. The Eastern North Pacific gray whales are currently considered to be at the stock's Optimum Sustainable Population size (2008 SAR).

(2) In 2008, a Steller sea lion was killed in a Makah fishery. Based on the geographical range of the species, this animal was most likely from the Eastern stock of Steller sea lions, which is listed as threatened under the ESA and therefore considered depleted under the MMPA. Based on currently available data, the minimum estimated U. S. commercial fishery-related mortality and serious injury for Eastern Steller sea lions is less than that 10 percent of the stock's PBR of 200 per year; therefore, fishery mortality and serious injury appears to be insignificant and approaching a zero mortality and serious injury rate (2008 SAR). In addition, the Eastern Steller sea lion population has been consistently increasing at an overall annual rate of 3.1 percent throughout most of the range (Oregon to southeastern Alaska), which may indicate that this stock is reaching Optimum Sustainable Population size (2008 SAR).

(3) In 2008, 3 harbor porpoises were killed in a Makah fishery. While the stock is unknown, based on the geographic range of the stock and the location of the Makah fisheries, the animals were either part of the OR/WA coast stock or the WA Inland Waters stock. As stated above, the PBR for this OR/WA coast stock is 277 and the minimum estimated fishery mortality and serious injury for this stock appears to be less than 10 percent of the PBR. Therefore, fishery mortality and serious injury appears to be insignificant and approaching zero mortality and serious injury rate. Also stated above, while the status of the WA Inland Waters stock relative to its Optimum Sustainable Population level and population trends is unknown, the uncorrected estimate of abundance in Washington inland waters was significantly greater in 2002–2003 than in 1996 (2008 SARs).

NMFS will continue to work closely with the affected tribal governments on a government-to-government basis to gather data on injuries and mortalities of marine mammals incidental to tribal fisheries.

General Comments

Comment 6: The MMC recommended, based on their recommendation that tribal fisheries be included on the LOF (comment/response 2 above), that NMFS notify all treaty tribes believed to be engaged in hunting that any directed taking of marine mammals requires authorization under the MMPA. In reviewing the SARs prepared by NMFS under section 117 of the MMPA, the MMC noted that tribal hunting of harbor seals and California sea lions is included as a possible source of mortality. The MMC asserted that if such hunting is in fact ongoing, it would be subject to the same analysis as the proposed taking of gray whales at issue in *Anderson* v. *Evans* and would presumably require authorization under the MMPA.

Response: NMFS acknowledges this comment; however, this comment is not applicable to the LOF rulemaking at hand. The LOF categorizes fisheries based solely on the incidental, not intentional, serious injury and mortality to marine mammals. However, this comment is relevant to the SARs rulemaking process; therefore, NMFS will address this comment as part of the comments received during the comment period for the proposed 2009 SARs

(June 26, 2009–September 24, 2009; overlapping with the comment period for the proposed 2010 LOF).

Comment 7: The MMC recommended NMFS incorporate into the applicable SARs language similar to that included in the SAR for the Washington stock of sea otters prepared by the U.S. Fish and Wildlife Service to clarify that, in accordance with the ruling in *Anderson* v. *Evans*, any such taking requires authorization under the MMPA.

Response: NMFS acknowledges this comment; however, this comment is not applicable to the LOF rulemaking at hand. This comment is relevant to the SARs rulemaking process; therefore, NMFS will address this comment as part of the comments received during the comment period for the proposed 2009 SARs (June 26, 2009–September 24, 2009; overlapping with the comment period for the proposed 2010 LOF).

Comment 8: The Garden State Seafood Association (GSSA) requested that NMFS provide the number of vessels which reported landings for specific fisheries and gear types, along with estimated number of vessels or persons in individual fisheries currently reported on the LOF. The GSSA noted that this information would be specifically pertinent when considering the ''Mid Atlantic mid-water trawl'' fishery and the ''Northeast mid-water trawl'' fishery. The GSSA stated that recently the number of vessels who reported landings using a mid-water trawl in the Mid-Atlantic was approximately 17 vessels.

Response: NMFS agrees that including information on the number of vessels landing catches to compare to the estimated number of permit holders could be helpful for providing an accurate description of effort in each fishery. However, while this information is readily available for some fisheries, gathering this information in other fisheries may be more complicated. It is unclear if the information would be readily available from state agencies. NMFS will consult with the responsible state agencies and consider incorporating this additional data for each fishery in future LOFs.

Comment 9: The CBD reiterated a comment made on the 2009 LOF that the LOF lists over 40 fisheries that are known to interact with ESA-listed marine mammals. Only one fishery, the ''CA/OR thresher shark/swordfish drift gillnet'' fishery, has authorization to take ESA-listed marine mammals. The CBD asserted that each of the other fisheries is therefore operating in violation of the both the ESA and MMPA. The CBD further asserted that NMFS must either issue permits for these fisheries authorizing take under these statutes, or take appropriate enforcement action, including, as necessary, closure of the fisheries, to ensure such illegal take does not continue to occur.

Response: NMFS received a similar comment on the 2009 LOF. As noted in NMFS' response to comments in the final 2009 LOF (73 FR 73032, December 1, 2008; comment/response 2), the CBD's comment refers to how NMFS authorizes takes of ESA listed marine mammals incidental to commercial fishing. The MMPA requires fishermen to obtain a permit granted under section 101(a)(5)(E) of the MMPA if they participate in a fishery that takes ESA-listed marine mammals. A 101(a)(5)(E) permit does not authorize the operation of a fishery. Instead, a 101(a)(5)(E) permit authorizes the incidental take of ESA-listed marine mammals in commercial fisheries, if certain provisions are met. Any incidental take of an ESA-listed species in an otherwise legally-operating fishery, without a 101(a)(5)(E) permit, is not authorized. If an ESA-listed species is taken by a fishermen in a fishery that has not been granted a MMPA 101(a)(5)(E) permit, then the fisher may be subject to enforcement proceedings.

NMFS acknowledges that the LOF includes fisheries in which ESA-listed species are listed as incidentally killed or injured, but for which NMFS has not issued a permit under section 101(a)(5)(E) of the MMPA. To issue a permit under section 101(a)(5)(E) of the MMPA, NMFS must determine that (1) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species and stocks; (2) a recovery plan has been developed or is being developed for such species or stock pursuant to the ESA; and (3) where required under section 118 of the MMPA, a monitoring program is established, vessels engaged in such fisheries are registered, and a take reduction plan has been developed or is being developed for such species or stock. NMFS is continuing this process of making these determinations in various fisheries on the LOF. Since the publication of the final 2009 LOF, NMFS has been reviewing available bycatch data for ESA-listed species in fisheries on the LOF.

Comment 10: The CBD reiterated a comment made on the 2008 and 2009 LOFs that the proposed 2010 LOF includes a table of fisheries subject to take reduction teams. While CBD found this table is very useful, they noted that there are Category I and II fisheries not yet subject to take reduction teams that also meet the statutory criteria for the convening of such teams. The CBD asserted that Category I and II fisheries not yet subject to take reduction teams which interact with strategic stocks must have take reduction teams promptly convened. The CBD viewed the Hawaii pelagic longline fishery as the highest priority for such a team as take continues to exceed PBR for the false killer whale.

Response: NMFS received similar comments on the 2008 and 2009 LOFs. As noted in the responses to comments on the 2008 LOF (72 FR 66048, November 27, 2007; comment/response 6) and 2009 LOF (73 FR 73032, December 1, 2008; comment/response 3), at this time, NMFS' resources for TRTs are fully utilized and new TRTs will be initiated when additional resources become available. When NMFS lacks sufficient funding to convene a TRT for all stocks that interact with Category I and II fisheries, NMFS will give highest priority for developing and implementing new take reduction plans to species and stocks whose level of incidental mortality and serious injury exceeds PBR, has a small population size, and are declining most rapidly, pursuant to MMPA section 118(f)(3).

Comment 11: The CBD reiterated a comment made on the 2009 LOF that the LOF once again includes ''Marine Aquaculture Fisheries'' as Category III fisheries. As stated in the past, the CBD does not believe aquaculture facilities are properly considered ''commercial fishing operations'' eligible for the take authorization contained in Section 118 of the MMPA. The CBD asserted that these facilities and activities, to the degree they interact with marine mammals, should be subject to the take prohibitions and permitting regimes contained in Section 101 of the MMPA.

Response: NMFS received a similar comment on the 2009 LOF. As noted in the responses to comments on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 5), eight aquaculture fisheries are listed on the MMPA LOF, all as Category III fisheries. NMFS' regulations implementing section 118 of the MMPA (50 CFR 229) specifically include aquaculture as a commercial fishing operation. The regulations in 50 CFR 229.2 define a ''commercial fishing operation'' as ''the catching, taking, or harvesting of fish from the marine environment * * * The term includes * * * aquaculture activities.'' Further, ''fishing or to fish'' is defined as ''any commercial fishing operation.'' Therefore, aquaculture fisheries are considered commercial fisheries that are managed under section 118 of the

MMPA, including inclusion on the annual LOF.

Comment 12: Consistent with its recommendations regarding the 2005 through 2009 LOFs, the MMC reiterated its previous recommendation that NMFS indicate the level of observer coverage for each fishery as part of the LOF.

Response: NMFS received similar comments on the 2005 through 2009 LOFs. As noted in the responses to comments on the 2005 LOF (71 FR 247, January 2, 2006; comment/response 6), 2006 LOF (71 FR 48802, August 22, 2006; comment response 4), 2007 LOF (72 FR 14466, March 28, 2007; comment/response 8), 2008 LOF (72 FR 66048, November 27, 2007; comment/response 4), and 2009 LOF (73 FR 73032, December 1, 2008; comment/response 1), NMFS continues to feel that the LOF is not the appropriate avenue for reporting this data because it will confuse rather than clarify if presented without all the associated information supplied in the SARs. Also, the LOF is not meant to be redundant to the SARs, but to base fishery classifications based on the information presented in the SARs.

NMFS continues to agree that observer coverage information would be useful for the reader to reference when determining whether a given fishery was adequately observed and no marine mammals were taken or the fishery was not adequately observed and mortality and serious injury may have occurred but were not documented. Therefore, NMFS is developing summaries for each Category I and II fishery on the LOF, which include a description of each fishery, the history of the fishery and it's interactions with marine mammals, and the level of observer coverage in recent years. When completed, these summaries will be placed on the NMFS Office of Protected Resources website for easy public access, the citation for which will be included in each LOF. NMFS hopes to have these summaries available for reference during the public comment period on the 2011 LOF.

NMFS also continues to refer readers to the SARs and the National Observer Program for information on observer coverage. The SARs can be accessed through the NMFS Office of Protected Resources' Web site at *http://www.nmfs.noaa.gov/pr.sars/*. Additional information can also be found on the National Observer Program Web site at *http://www.st.nmfs.gov/st4/nop/*.

Comment 13: The Marine Conservation Alliance (MCA) stated that there is a significant legal and structural issue associated with the fishery categorization process which is completely ignored by NMFS. The MCA asserted that the formula NMFS has developed for placing fisheries into Category I, II, or III is arbitrary and capricious and may well violate the equal protection and due process clauses of the U.S. Constitution. The MCA asserted that if a fishery is the only one interacting with a strategic marine mammal stock and it is responsible for the serious injury or death of 1 percent of the PBR, the fishery is placed into Category III and subject to no further regulation under this section of the MMPA. However, the MCA stated that if a second and new fishery enters the scene and it is responsible for taking 10 percent or more of the PBR, then the first fishery, which a moment ago was determined to be having no impact on the marine mammal stock, is suddenly transformed into a fishery having a significant impact and a fishery that must be subject to additional regulation as a Category II fishery. The MCA asserted that the regulations provide that if only one fishery is interacting with a strategic marine mammal stock, and it is responsible for 10 percent or less of the PBR, then it is a Category III fishery since it, together with all other fisheries interacting with that marine mammal stock, is responsible for the serious injury and mortality of 10 percent or less of the PBR. The MCA asserts that classifying fisheries into Categories II or III based on such methodology is inconsistent and arbitrary.

Response: The current fishery classification system continues to be widely accepted as accurate by NMFS, the scientific community, environmental organizations and the fishing industry. As noted in a response to a similar comment on the 2008 LOF (72 FR 66048, November 27, 2007; comment/response 7), NMFS implemented the LOF fishery classification criteria in the final regulations to implement the 1994 amendments to the MMPA (60 FR 45086, August 30, 1995) after ample consideration of comments and suggestions from the public. NMFS refers the reader to the response to comments 5 through 9 in that rule for a detailed explanation of the reasoning for setting the dividing thresholds between Category II and III as 1 percent of PBR. NMFS also finalized an Environmental Assessment (EA) in August 1995, to analyze the impacts of the regulations implementing the 1994 amendments on the environment and the public. NMFS finalized a revised EA in December 2005 on the process of classifying U.S. commercial fisheries. A full copy of the updated 2005 EA can be found at *http://www.nmfs.noaa.gov/pr/pdfs/interactions/loflea.pdf*.

The fishery classification criteria consider the rate of incidental serious injury and mortality of marine mammals in commercial fisheries on a stock specific basis. Therefore, the rate of interaction of a fishery with a marine mammal stock with a low PBR can be significant even if it appears to be a minimal problem based on the size of the fishery or frequency of the interactions. The chosen approach allows NMFS to focus management actions where fishery interactions have a significant negative effect on the population. In addition to the 1 percent threshold, the definitions of Category II and III fisheries include qualitative criteria that allow the Assistant Administrator for Fisheries to place a fishery into Category II or III in the absence of reliable information. These qualitative criteria will allow the Assistant Administrator to take into consideration cases where the PBR level for a particular stock is very low and/or where the level of incidental interaction with commercial fisheries is low and not likely to delay the population's attainment of its Optimum Sustainable Population. See the general description of the two-tiered scheme and qualitative criteria that may be used to classify a fishery in the preamble in this rule under *Fishery Classification Criteria*.

Comments on High Seas Fisheries

Comment 14: The CBD reiterated previous concerns that the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) fisheries are listed in the LOF as Category II fisheries. The CBD asserted that the CCAMLR trawl fishery for krill should be listed as Category I. The CBD noted that a 2006 **Federal Register** notice indicated that observer data from three vessels, including a U.S. flagged vessel, reported that 95 fur seals were caught in the 2004/2005 season and 156 fur seals were caught in the 2003/2004 season in two CCAMLR areas (71 FR 39642, 39646, July 13, 2006). The CBD also noted that the Final Programmatic Environmental Impact Statement (EIS) for CCAMLR fisheries noted that a single U.S.-flagged krill vessel killed 138 Antarctic fur seals in a five-week period in 2004. The CBD asserted that this fishery is clearly not operating at a ''zero mortality and serious injury rate'' and must be listed in the LOF as a Category I fishery.

Response: NMFS received similar comments on the 2008 and 2009 LOFs.

As noted in the responses to comments on the 2008 LOF (72 FR 66048, November 27, 2007; comment/response 5) and 2009 LOF (73 FR 73032, December 1, 2008; comment/response 9), and in the final rule implementing measures adopted by CCAMLR (72 FR 48496, August 23, 2007; comment/response 29), the CCAMLR trawl fishery for krill does not qualify as a Category I fishery.

To be considered Category I, a fishery must have a serious injury or mortality rate of marine mammals at greater than 50 percent of a stock's PBR level (50 CFR 229.2). While NMFS does not have sufficient information to calculate PBR level for marine mammal stocks found outside of the U.S. waters, including Antarctic fur seals, there is available information on the relative abundance of this species. The relative abundance of Antarctic fur seals was estimated as 1.5 million in 1990 and is thought to have since increased to over 4 million (CCAMLR Final Programmatic EIS, October 2006). Further, at the 2006 Antarctic Treaty Consultative Meeting, the Antarctic Treaty Parties delisted the Antarctic fur seal from its listed of Specially Protected Species. The delisting reflected the much-increased abundance of fur seals. In 2003/2004, a total of 158 Antarctic fur seals were observed taken by the single U.S.-permitted trawl krill fishing vessel in the CCAMLR region, 142 of which were mortalities. As a result, a permit provision was added requiring the use of a seal excluder device and any other gear modifications or fishing practice that reduces or eliminates Antarctic fur seal bycatch. In the 2004/2005 fishing season the U.S. vessel used the required seal excluder device; and, as a result, 24 Antarctic fur seals were incidentally taken, 16 of which were mortalities (2005 Report of the CCAMLR Scientific Committee). This modification would be a requirement of any CCAMLR fishing permit NMFS would issue to the vessel. Ninety-five fur seals were reported caught during fishing operations in 2005/2006, during which time no U.S. krill trawl vessel was operating. Given the large estimated abundance of Antarctic fur seals, the current low rate of incidental serious injury and mortality would likely be well below 50 percent of PBR if NMFS were to calculate a PBR for this stock. Therefore, the fishery does not qualify as a Category I fishery. In addition, no U.S. vessels have participated in this fishery in recent years and NMFS has not received any requests for a permit to participate in this fishery in the upcoming fishing season.

Comment 15: In comments on the proposed 2009 LOF, the CBD raised the concern that NMFS was treating single fisheries that have both a high seas and within-EEZ component as two separate fisheries for LOF purposes. The CBD was pleased that NMFS has clarified that the high seas operations of certain fisheries are extensions or components of existing fisheries operating in U.S. waters and therefore injure and kill the same marine mammal species and share the same LOF category. The CBD noted that this change reduces the risk that the total marine mammal take from such a fishery may be inappropriately apportioned into two separate fisheries (the high seas and non-high seas components of a single fishery) and therefore result in an underestimation of the true environmental effect, and LOF classification, of what is more properly considered a single fishery.

Response: NMFS will continue to include language in the preamble of future LOFs to clarify that many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of the same fishery operating within U.S. waters (listed in Table 1 or 2). NMFS will continue to designate those fisheries in Tables 1, 2, and 3 by an ''*'' after the fishery's name.

Comment 16: The MMC supported NMFS' inclusion of high-seas fisheries on the LOF. The MMC noted that the descriptions and evaluations of high-seas fisheries on the LOF highlight the lack of data on both the status and the incidental take of marine mammals outside the U.S. EEZ, a lack of data that is not surprising because current U.S. marine mammal stock assessment programs are focused on U.S. waters. The MMC commented that gathering data to support the management of high-seas fisheries will be difficult but will provide many ancillary benefits, including the development of useful tools for managing transboundary stocks. Therefore, the MMC reiterated its previous recommendation that NMFS develop and implement the research and monitoring programs needed to manage high-seas fisheries in a manner consistent with the requirements of the MMPA and the High Seas Driftnet Fishing Moratorium Protection Act.

Response: NMFS continues to agree that the development of a research and monitoring plan to manage high seas fisheries in a manner consistent with the requirements of the MMPA will require novel stock assessment techniques and the development, and/or continuation, of international partnerships (please see the 2009 LOF, 74 FR 73032, December 1, 2008; comment/response 8). NMFS is currently developing a strategic action plan for addressing international marine mammal conservation issues, including the need to gather the necessary data and strengthen international partnerships to effectively manage marine mammal bycatch in domestic and foreign high seas fisheries.

Comment 17: The Hawaii Longline Association (HLA) stated that NMFS should use fishery- and marine mammal-specific information to classify high seas fisheries according to their interactions and, where such information is not available, should designate high seas fisheries as Category II regardless of the classification of their EEZ components. The HLA asserted that, as a threshold matter, the proposed LOF arbitrarily and inaccurately justifies its categorization of the high seas deep-set fishery on the assumption that the fishery interacts with the so-called ''pelagic'' false killer whale stock. The HLA noted that by NMFS's definition, the ''pelagic'' false killer whale stock occurs only in the U.S. EEZ - an area that does not include the high seas. The HLA stated that NMFS is arbitrarily picking and choosing when and where it will split or combine artificially-constructed false killer whale stocks for purposes of estimating abundance and establishing a given fishery's rate of interaction with the stock (and, hence, the fishery's LOF categorization). The HLA asserted that either NMFS must acknowledge that all false killer whales outside the ''insular'' zone belong to the Eastern North Pacific stock, the size of which is unknown, or it must consistently apply its arbitrary and scientifically unsound ''pelagic'' stock definition.

The HLA also commented that recent reports call into question the proposed LOF's assumption that the high seas deep-set fishery interacts with noncoastal marine mammals to the same extent as the U.S. EEZ fishery (Forney and McCracken, 2008), and suggest that false killer whales may be sufficiently abundant on the high seas between Hawaii and Palmyra Atoll that already low deep-set fishery interaction rates may warrant at least a Category II classification (Barlow and Rankin, 2007).

Response: This comment questions: (1) NMFS' criteria for classifying high seas fisheries in general; (2) The manner in which NMFS classifies the high seas portion of the HI-based deep-set

longline fishery (the ''Western Pacific pelagic deep-set longline'') based on serious injury and mortality levels of false killer whales (HI pelagic stock); and (3) Information regarding false killer whale stock delineation, and false killer whale abundance and fishery takes on the high seas. NMFS responded to a similar comment in the final 2009 LOF (73 FR 73032, December 1, 2008; comment/response 11).

(1) The first part of this comment questioned NMFS' criteria for classifying high seas fisheries. NMFS agrees that fisheries should be classified on the LOF according to their interactions with marine mammals. Although information on interaction rates (per trip or per set) are available for the high seas deep-set and shallow-set fisheries, PBR levels for marine mammal stocks on the high seas are not available. This is because, as mandated by Section 117 of the MMPA (16 U.S.C. 1386), NMFS prepares SARs and calculates PBR levels for marine mammal stocks occurring ''in waters under the jurisdiction of the United States.'' NMFS does not generally develop SARs or calculate PBR levels for stocks on the high seas; therefore, NMFS does not possess the same information to categorize high seas fisheries as is used to categorize fisheries operating within U.S. waters.

As stated in the preamble of the proposed 2010 LOF (74 FR 27739, June 11, 2009), many fisheries operate in both U.S. waters and on the high seas, and fishing gears and methods in these fisheries remain virtually unchanged on either side of the 200 nmi EEZ boundary. In these cases, the high seas component of the fishery (Table 3) is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 by a ''*'' after the fishery's name. While NMFS recognizes it is somewhat confusing to include different components of the same fishery in two tables on the LOF, listing the two components separately on two tables is necessary because of differences in the Federal permitting systems for vessels permitted to operate only within U.S. waters versus those permitted to operate within U.S. waters and on the high seas.

(2) The second part of this comment questioned the manner in which NMFS classifies the high seas portion of the HI-based deep-set longline fishery (the ''Western Pacific pelagic deep-set longline'') based on serious injury and mortality levels of false killer whales (HI pelagic stock). As stated in the preamble of the proposed 2010 LOF, a fishery is categorized on the LOF at its highest level of classification (e.g., a fishery qualifying for Category II for one marine mammal stock and a Category I for another stock, will be listed as Category I). This also applies to fisheries that operate over a large geographic range. The entire fishery is categorized on the LOF at its highest level of classification, regardless of where marine mammal interactions occur within the fishery's range. Since the ''Western Pacific pelagic deep-set longline'' and ''HI deep-set (tuna target)'' are two components of the same fishery, distinguished from each other only by which side of the 200 nmi EEZ boundary they operate, and the component of the fishery operating in U.S. waters is classified as Category I, the high seas component of the fishery is also classified as Category I.

If NMFS receives information indicating that the high seas component of a fishery operates significantly differently than the component operating within U.S. waters, NMFS would consider splitting that fishery into two fisheries. However, the fishing operations of the high seas component of this fishery are not significantly different than fishing operations within the U.S. EEZ, and a single vessel may set both within the U.S. EEZ waters and on the high seas. Therefore, splitting these components into separate fisheries, and classifying them separately, is not warranted.

(3) The third part of this comment is related to information regarding false killer whale stock delineation, and false killer whale abundance and fishery takes on the high seas. The commenter is correct in that NMFS currently defines the pelagic stock of false killer whales as occurring from 75nmi to the EEZ boundary (2008 SAR). However, these animals are thought to move across the EEZ boundary into the high seas. NMFS truncated the stock boundary as ending at the 200nmi EEZ line because of the mandate in section 117 of the MMPA (16 U.S.C. 1386) for NMFS to create SARs and calculate PBR levels for marine mammal stocks occurring ''in waters under the jurisdiction of the United States.'' While NMFS does not gather detailed abundance information for the entire range of Hawaiian false killer whales, NMFS has estimated the density of false killer whales on the high seas within the area of operation of U.S. longline fisheries to be 0.049 animals per 100 km2, which is not dramatically different than the density within the Hawaiian EEZ (0.022 animals per 100 km2) (Barlow and Rankin 2007). Also, while NMFS does not have information on the level of bycatch by international vessels on the high seas, take rates by U.S. vessels on the high seas (0.78 animals per 1000 sets) are similar to take rates by U.S. vessels within the Hawaiian EEZ (0.71 per 1000 sets) (Forney and Kobayashi, 2007). No complete abundance estimate for false killer whales on the high seas is available, but an estimate made for part of the high seas range of these fisheries is 906 (C.V. = 0.68), which would result in a PBR of 5.2 false killer whales for all U.S. and international fisheries combined. The estimated mortality and serious injury of false killer whales by U.S. vessels operating on the high seas is 5.4 animals per year (Draft 2009 SAR), which already exceeds the PBR, without taking into account international takes.

Comment 18: The HLA stated that the proposed 2010 LOF nowhere mentions longline fishing in and around Palmyra Atoll, Johnston Atoll and other U.S. possessions in the Pacific Ocean. The HLA noted that the 2008 false killer whale SAR estimates a population size of 1,329 animals for the Palmyra Atoll stock, butt is not clear how the proposed 2010 LOF takes into account, in any manner, longline fishing in U.S. waters around these possessions. The HLA asked if the proposed LOF intended to include these animals in its ''pelagic'' false killer whale stock definition? Or, are fisheries in these areas considered part of the deep-set fishery or a separate longline fishery (which then should be separately categorized)? The HLA then asked, if the former, why is the fishery categorized based only upon a population estimate and PBR that does not include the Palmyra population estimate? The HLA asserted that NMFS should clarify these issues in the final 2010 LOF, particularly because false killer whale stock estimates exist for Palmyra Atoll and Johnston Atoll and could be used to derive a PBR that could be measured against observer data for longline fishing in those waters.

Response: As stated in the response to a similar comment on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 12), NMFS considers U.S. vessels deep-set longline fishing in U.S. waters around Palmyra Atoll, Johnston Atoll, and other U.S. Territories in the Pacific Ocean as operating in the same fishery, the ''HI deep-set (tuna target) fishery'' (and/or its high seas component, the ''Western Pacific pelagic deep-set longline''). The fishery description provided in the final 2008 LOF (72 FR 66048, November 27, 2007), states that Hawaii-based longline fishing effort takes place over a huge geographic range extending north-south from 40° N. lat. to the equator and east-west from

Kure Atoll to as far as 135° W. long., with fishing for tunas primarily occurring around the main Hawaiian Islands and south of the Hawaiian Islands.

In the final 2008 SARs, there were three recognized false killer whale stocks in the Pacific Islands region, including the Palmyra stock: (1) the Hawaii insular stock, and (2) the Hawaii pelagic stock, and (3) the Palmyra stock. The status of false killer whales in Palmyra Atoll EEZ waters relative to the Optimal Sustainable Population is unknown, and there are insufficient data to evaluate trends in abundance. The rate of mortality and serious injury to false killer whales within the Palmyra Atoll EEZ in the Hawaii-based longline fishery (0.3 animals per year) does not exceed the PBR (6.4) for this stock. The total fishery mortality and serious injury for Palmyra Atoll false killer whales is less than 10 percent of PBR. Additional injury and mortality of false killer whales is known to occur in U.S and international longline fishing operations in international waters, and the potential effect on the Palmyra stock is unknown.

The ''HI deep-set (tuna target) longline'' fishery is classified as a Category I fishery based on its interactions resulting in serious injury and mortality levels that exceed the PBR of the Hawaii pelagic stock of false killer whales. As noted in the response to comment 17, a fishery is categorized on the LOF based at its highest level of classification. Therefore, while the rate of mortality and serious injury to false killer whales within the Palmyra Atoll EEZ in the Hawaii-based longline fishery does not warrant a Category I classification, the fishery remains a Category I based on serious injury and mortality levels of the pelagic stock of false killer whales.

Commercial Fisheries in the Pacific Ocean

Comment 19: The MCA believed that NMFS' proposed 2010 classification of fisheries incorrectly designates the ''Bering Sea Aleutian Islands (''BSAI'') Pollock trawl'' and the ''BSAI flatfish trawl'' fisheries as Category II fisheries. The MCA noted that the ''BSAI flatfish trawl'' fishery is classified as Category II because of interactions with the western stock of Steller sea lions, and the ''BSAI Pollock trawl'' fishery is classified as Category II because of interactions with the western stock of Steller sea lions; eastern North Pacific, Gulf of Alaska, BSAI transient killer whales; central North Pacific humpback whales; and western North Pacific humpback whales. The MCA stated that, with respect to the two fisheries at issue, the data and analyses on which NMFS relied to calculate the PBR and mortality and serious injury rates are flawed. The MCA further stated that by utilizing this flawed data, NMFS has seemingly made an arbitrary and capricious decision not to use the best scientific data available.

The MCA provided reasoning, research results, and literature citations to support the assertion that the data used for stock delineations, PBR calculations, and mortality and serious injury calculations in the final 2008 SARs (for the marine mammal stocks listed in the previous paragraph) are flawed. The MCA stated that NMFS double counts mortalities and injuries because of the procedure NMFS uses to calculate marine mammal bycatch (including incorporating all observed and unobserved fishing sets into analyses and counting mortality and serious injury twice for certain stocks). The MCA commented that relying on the flawed SARs has caused NMFS to understate the PBR for marine mammal stocks. The MCA asserted that the errors in the PBR calculations in the SARs require that these errors be corrected and PBRs recalculated before NMFS proceeds with any final LOF designations.

Response: NMFS acknowledges this comment; however, this comment is not applicable to the LOF rulemaking process at hand. This comment is concerned with the calculation of PBRs and mortality and serious injury rates, which NMFS' reports in the annual SARs. NMFS then categorizes fisheries on the LOF based on the information presented in the SARs. NMFS does not complete any PBR or serious injury and mortality-related analysis in the LOF rulemaking process. Also, this comment references information in the final 2008 SARs, which is not relevant to the proposed 2009 SARs rulemaking public comment period that overlapped with the proposed 2010 LOF comment period and was therefore not directed to the SARs for consideration in the 2009 SARs rulemaking process. The commenter may resubmit these comments during the next SARs open public comment period.

Comment 20: The MCA stated that there is a serious disconnect between the proposed 2010 LOF and the SARs. In the proposed 2010 LOF, NMFS stated the ''BSAI Pollock trawl'' fishery is placed into Category II in part because of interactions with the central and western North Pacific stocks of humpback whales (74 FR at 27752, June 11, 2009). The MCA stated that the SAR assigns 100 percent of the fisheries related mortality for these two stocks of humpback whales to other fisheries. The MCA noted that the SAR never mentions the ''BSAI Pollock trawl'' fishery as causing humpback whale deaths or serious injury (final 2008 SAR at page 165, 173). The MCA asserted that since the LOF is based on the SAR, the ''BSAI Pollock trawl'' fishery cannot be placed in Category II based on humpback whale interactions that are not reported in the SAR.

Response: The classification of a fishery as a Category II fishery is based on the annual mortality and serious injury of a stock in a given fishery exceeding 1 percent and less than 50 percent of the PBR level (72 FR 66048, 27 November 2007). While there are known historical interactions between the BSAI pollock trawl fishery and the central and western North Pacific stocks of humpback whales, these interactions are not the basis for classifying the ''BSAI Pollock trawl'' fishery as a Category II fishery (i.e., the level of serious injury and mortality of these stocks in the ''BSAI Pollock trawl'' fishery is below 1 percent of the stocks' PBR levels). The continued inclusion of the superscript ''1'' following these stocks in this fishery on Table 1 was a typographical error, which NMFS has corrected in this final rule. The Tier 1 approach to classifying fisheries considers the cumulative fishery mortality and serious injury for a particular stock; however, Tier 2 classification of fisheries considers fishery-specific mortality and serious injury for a particular stock. A fishery is typically categorized on the LOF at its highest level of classification. In the ''BSAI Pollock trawl'' fishery, the estimated annual level of serious injury and mortality of the Eastern North Pacific, Gulf of Alaska, Aleutian Islands, and Bering Sea transient killer whale stock is 0.4, or 12.9 percent of PBR (PBR is 3.1), and the western Steller sea lion stock is 3.8, or 1.6 percent of PBR (PBR is 234). Therefore, this fishery is classified as a Category II fishery under the Tier 2 approach to fishery classification.

Comment 21: The MMC and the CBD recommended the ''Gulf of Alaska sablefish longline'' fishery be elevated above a Category III. The CBD based this recommendation on frequent interactions with sperm and killer whales, qualifying this fishery for Category I or II. The MMC noted the 2008 SARs indicate that observers reported that three sperm whales were seriously injured in this fishery in 2006. The MMC asserted that, given the estimated number of injuries or deaths based on 2002 to 2006 data, NMFS' inability to calculate a potential

biological removal level for the North Pacific sperm whale stock is not a sufficient basis for maintaining the current Category III classification for this fishery. The MMC further noted that NMFS is unable to estimate PBR levels for 57 percent of the marine mammal stocks that occur in Alaska because of inadequate or outdated data. The MMC asserted that NMFS cannot continue to use this lack of information as the basis for failing to classify fisheries that incidentally kill or seriously injure marine mammals. Doing so is inconsistent with NMFS' own guidance for addressing such situations, which directs placement in category II when the available information is not sufficient to categorize a fishery accurately (74 FR at 27740, June 11, 2009).

Response: NMFS received similar comments on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 22). The PBR level for the North Pacific sperm whale stock is unknown because a reliable abundance estimate is not available. NMFS is in the process of analyzing bycatch data from 2007 and 2008 and will re-evaluate the category placement for the ''Gulf of Alaska sablefish longline'' fishery on the 2011 LOF.

The commenter's interpretation of NMFS' guidance is not entirely correct. NMFS' guidance provided in the preamble of each proposed LOF, including the proposed 2010 LOF (74 FR at 27740, June 11, 2009), states, ''In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury of mortality is 'occasional' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).'' NMFS has such information on some of the ''other factors'' related to the ''Gulf of Alaska sablefish longline'' fishery, such as fishing techniques, gear used, and qualitative data and stranding data. As stated above, NMFS is in the process of evaluating available data and will re-evaluate the category placement of this fishery in the 2011 LOF.

Comment 22: The MMC and the CBD disagreed with NMFS' proposal to reclassify the ''Alaska southeast salmon purse seine'' fishery from Category II to Category III based on lack of data regarding humpback whale takes. The MMC noted that high levels of entanglement-related scarring have been documented for humpback whales in Alaska. The MMC further noted that the lack of evidence for interactions does not provide a reliable basis for reclassifying this fishery to category III if NMFS has failed to institute an observer program for it. The MMC stated that given that the fishery has no observer coverage and analogous fisheries are known to seriously injure humpback whales, NMFS should maintain the fishery's Category II classification.

Response: In this case a 15–year lack of evidence of serious injury and mortality in this fishery, even in the absence of an observer program, is enough to warrant its re-categorization. Under the annual LOF, fishery categories are assigned via NMFS' well-documented process of analyzing known or estimated levels of serious injury and mortalities relative to a stock's PBR. In some cases, a fishery with no recent documented injuries or mortalities of marine mammals may be classified in Category II by analogy to similar gear types in similar areas that are known to cause mortality or serious injury of marine mammals. However, in those instances, additional available information (such as stranding data, fishermen self-reports, or anecdotal information) suggests serious injury or mortality of marine mammals may be occurring that is likely to exceed the Category III threshold. Only marine mammal serious injuries and mortalities that can be assigned to a specific fishery are included in fisheries' categorization. The re-categorization of the ''Southeast Alaska purse seine'' fishery in the 2010 LOF is consistent with this practice, albeit somewhat delayed. NMFS delayed the re-categorization of this fishery until this year as a precautionary measure, and is satisfied at this time that this fishery meets the criteria for Category III.

While humpback whale scarring is documented in Alaska, at this time there is no accepted method to establish a reliable rate of fishing-related serious injury or mortality from documented scarring. Scarring alone is not valid evidence for classifying a fishery as Category II. Further, in the few cases of known serious injury or mortality of humpback whales in purse seines in Alaska, unique scarring patterns from purse seine gear have been shown to be easily identifiable. NMFS recognizes that the lack of observer coverage due to funding constraints is not ideal; however, the lack of observer coverage along is not reason for classifying a fishery as Category II.

Comment 23: The CBD asserted that all other Alaska pot fisheries should be classified as Category II rather than Category III.

Response: Categorization of individual Alaska fisheries in Category II due to interactions with humpback whales are based on documented serious injury and mortality levels of humpback whales in each of those fisheries, including the ''AK Bering Sea sablefish pot'' fishery. Other Alaska pot, ring net, or trap fisheries either have no documented humpback whale serious injuries or mortalities or have low levels that do not meet the Category II requirements.

Comment 24: The HLA supported the re-labeling of the false killer whale stock with which the deep-set fishery interacts as the ''HI pelagic'' stock (as opposed to the ''HI'' stock), but only insofar as this change purports to distinguish the false killer whale ''pelagic'' stock from the false killer whale ''insular'' stock. As HLA has repeatedly commented (including comments submitted on the draft 2008 SARs), the HLA believes there are significant uncertainties and errors perpetuated in NMFS' false killer whale SAR year after year, which is then used to generate inaccurate LOFs. Specifically, the HLA disagreed with the continued division of false killer whales into three fictional stocks based on U.S. EEZ boundaries and NMFS' underestimate for the population abundance of false killer whales with which the deep-set fishery interacts. Thus, while HLA agreed with the proposed LOF's recognition of separate ''pelagic'' and ''insular'' false killer whale stocks, it did not agree with the cramped manner in which NMFS has defined the ''pelagic'' stock. The HLA asserted that NMFS must address these concerns or, at a minimum, acknowledge the significant uncertainties that underlie the determinations made in the proposed LOF.

Response: NMFS acknowledges this comment and the reference to the false killer whale stock with which the deep-set fishery interacts has been changed to the ''HI pelagic'' stock on the final 2010 LOF. The comment is also concerned that there are uncertainties with the designation of the Hawaii pelagic stock of false killer whales. This comment is not relevant to the LOF rulemaking at hand. NMFS reports stock delineations and discussions surrounding the uncertainties in the data used to base stock delineations, after opportunity for public review and comment, in the

annual SARs. NMFS determines which species and stocks are included as incidentally killed or injured in a fishery on the LOF in part by annually reviewing the information presented in the current SARs, which are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. NMFS also reviews other sources of new information, including observer data, stranding data, and fisher self-reports. The LOF is not intended to repeat the information included in the SARs, but rather to incorporate the SARs with other sources of information in order to make determinations based on the best available science. However, this comment is relevant to the SARs rulemaking process and NMFS is aware of the concerns raised by the HLA and the MMC in recent years. Therefore, NMFS will address this comment as part of the comments received during the comment period for the proposed 2009 SARs (June 26, 2009–September 24, 2009; overlapping with the comment period for the proposed 2010 LOF).

Comment 25: The HLA supported NMFS's proposal to remove spinner dolphin (HI stock) and pantropical spotted dolphin (stock unknown) from the list of species and stocks that interact with the deep-set fishery and shallow-set fishery, respectively.

Response: NMFS acknowledges this comment. These stocks are removed from the list of species and stocks incidentally killed or injured in this final rule.

Comment 26: The CBD reiterated a previous comment from the 2009 LOF that various Hawaiian fisheries are known or suspected of interacting with Hawaiian monk seals. The CBD asserted that, given the critically endangered status of the monk seal, any interaction is significant and these fisheries should be reclassified as Category I or II.

Response: NMFS received a similar comment on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 13). The LOF lists the Hawaiian monk seal on the list of species and stocks incidentally killed or injured in the Category III ''HI lobster trap'' and ''HI Main Hawaiian Islands (MHI), Northwestern Hawaiian Islands (NWHI) deep sea bottomfish'' fisheries. The available information on Hawaiian monk seal interactions with these fisheries is:

(1) ''HI lobster trap'' fishery: There have not been any reported interactions since the mid–1980s; and

(2) ''HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish'' fishery: The final 2008 SAR states that in the past, monk seal interactions with fisheries in the NWHI were documented, but direct interactions have since become rare or non-existent, and issues related to competition have also somewhat abated. A Federal observer program of the NWHI bottomfish handline fishery was conducted from the fourth quarter of 2003 through 2006, and no monk seal interactions were observed. This fishery has not been observed since 2006. The NWHI lobster fishery closed in 2000, and on June 15, 2006, former President Bush signed a proclamation that created the Northwestern Hawaiian Islands Marine National Monument. Subsequent regulations prohibit commercial fishing in the Monument except for the bottomfish fishery (and associated pelagic species catch), which may continue until 2011. The MHI bottomfish handline fishery may also interact with monk seals as evidenced by recent fatty acid research; however, no mortalities or serious injuries have been attributed to this fishery.

While serious injuries and mortalities have not been documented in recent years, NMFS has retained Hawaiian monk seals as a species or stock incidentally killed or injured in these fisheries because monk seals in the Main Hawaiian Islands are hooked and entangled at a rate that has not been reliably assessed and the true interaction rate cannot be estimated without purpose-designed observation effort. Also, the PBR level for monk seals is currently ''undetermined.'' Due to the fact that the PBR level for monk seals is undetermined and that the hooking and entanglement rate cannot be reliably assessed, NMFS will retain the ''HI lobster trap'' and ''HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish'' fisheries as Category III fisheries on the LOF, until more information becomes available to determine whether reclassification is warranted.

Comment 27: The CBD noted that available information indicates that the ''American Samoa longline'' fishery should be listed as Category I based on its interactions with false killer whales.

Response: As stated in the preamble for each LOF, a fishery is classified as Category I if the annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of a stock's PBR level. A fishery is classified as Category II if the annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level. NMFS stated in the proposed LOF for 2010 (73 FR 27739, June 11, 2009) that the abundance estimate and the PBR for the false killer whales interacting with the American Samoa longline fishery are unknown. NMFS biologists at the Southwest Fisheries Science Center will analyze the information on false killer whale abundance and interactions with the ''American Samoa longline'' fishery during the development of the 2010 SAR. NMFS will revisit whether reclassification of this fishery is warranted based on the updated SAR analyses at that time.

At this time a fishery classification of Category I cannot be scientifically substantiated. The fishing gear and methods used in the American Samoa longline fishery are similar to those of other Category I and II longline fisheries elsewhere in tropical/sub-tropical latitudes of the Pacific that are taking false killer whales. Therefore, classification of this fishery as Category II by analogy is warranted. NMFS recognizes the uncertainties with the false killer whale stock structure in American Samoa and will continue to assess false killer whale abundance and take estimates as resources become available. Please also see the discussion of a similar comment on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 14).

Comment 28: The MMC concurred with NMFS' proposal to reclassify the ''American Samoa longline'' fishery from Category III to Category II. The MMC further recommended that NMFS not postpone the injury determinations for the animals released alive from interactions with longline gear in 2008.

Response: NMFS acknowledges the concurrence and ''American Samoa longline'' fishery is reclassified from Category III to Category II in this final rule. NMFS understands the concerns about the fishery impacts to false killer whales in American Samoa, especially since there is a the lack of population abundace or stock status information from this area. In response to this concern NMFS began observing this fishery. In 2008, the observer coverage was 6.4 percent. NMFS will continue to assess false killer whale abundance and take estimates as resources become available. NMFS is not postponing determinations of the three marine mammal interactions reported in this fishery in 2008. NMFS is analyzing the 2008 observer data and making the necessary injury determinations during the development of the 2010 SARs. This timeline is in line with NMFS' process for reviewing and updating each annual NMFS SAR. The data presented in the annual SARs have an average of a two-year time delay because of the time

needed to properly analyze the data and complete the peer-review process.

Comment 29: The CBD stated that the ''Hawaii shallow-set longline'' fishery should be listed as a Category I fishery, since observer data from 2008 show takes of false killer whales and humpback whales in this fishery.

Response: For the 2010 LOF, a reclassification of the Hawaii shallow-set longline fishery to a Category I is not warranted. As noted in NMFS' response to comments on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 15), NMFS analyzes observer data and applies observed takes against calculated PBR levels during the process of updating and publishing the annual SARs. NMFS then classifies fisheries on the LOF based on the most recent SARs (including observer documented interactions, stranding data, and other data reported in the SARs). The 2010 LOF is based on information in the final 2008 SARs, which includes analysis of the observer takes against calculated PBR levels through 2006. As noted in the response to comment 28 above, the data presented in the annual SARs have an average of a two-year time delay because of the time needed to properly analyze the data and complete the peer-review process. Observer data from 2008 has not yet been analyzed and included in the current SARs or included in the level of annual mortality and serious injury for false killer whales. NMFS will reexamine the categorization of this fishery on a future LOF if the analysis of the 2008 observer data reported in the SARs indicates that a change in categorization is warranted.

Comment 30: The MMC concurred with NMFS' proposal to classify the ''Hawaii shortline'' fishery as Category II.

Response: NMFS acknowledges this comment and has added the ''Hawaii shortline'' fishery as a Category II fishery in this final rule.

Comment 31: The CA Wetfish Producers Association (CWPA) agreed with NMFS' proposal to remove short-finned pilot whales (CA/OR/WA) from the list of species and stocks killed or injured in the Category II ''CA squid purse seine'' fishery.

Response: NMFS acknowledges this comment and has removed short-finned pilot whales (CA/OR/WA) from the list of species and stocks killed or injured in the Category II ''CA squid purse seine'' fishery.

Comment 32: The CWPA requested NMFS utilize the most recent scientific information in terms of observer data from 2004–2008 to update the list of species and stocks killed or injured in the ''CA squid purse seine'' fishery and reclassify the fishery to a Category III. The CWPA noted that observer data from the California Coastal Pelagic Purse Seine Observer Program contains a single observed mortality of an ''unidentified common dolphin'' in this fishery on January 3, 2005, and past LOFs have represented this interaction as ''common dolphin, unknown.'' The CWPA stated that, while the two cetacean species do exhibit some overlapping distribution, there are substantially more recent data and robust observer data available to NMFS than just 2006: there were more than 193 interaction-free trips observed by Federal observers during 2004 to 2006, 80 more clean sets observed in mid to late 2007, and 13 interaction-free observed seine sets (4 trips) in 2008.

Response: NMFS received similar comments on the 2008 and 2009 LOFs. As noted in the final 2008 LOF (72 FR 66048, November 27, 2007; comment/response 19) and final 2009 LOF (73 FR 73032, December 1, 2008; comment/response 32), NMFS based this listing on observer information from this fishery collected from 2004 through 2007. When able, NMFS bases serious injury and mortality estimates on the most recent 5 years for which data have been analyzed (NMFS 2005, Guidelines for Assessing Marine Mammal Stocks [GAMMS] II). If the total fishing effort has changed substantially over the last 5 years, NMFS may use only the most recent relevant data to most accurately reflect the current level of annual mortality. In some cases where information is lacking, such as in cases where there is no observer coverage, information that is more than 5 years old may not be ignored if it is the most appropriate information available in a particular case (NMFS 2005, GAMMS II report).

In each year from 2004–2007, observer coverage in the ''CA squid purse seine'' was low, under 2 percent. There was one mortality of a short-beaked common dolphin in 2005 and in 2006 one unidentified common dolphin was observed seriously injured. There are no available biological samples or photographs of the injured dolphin; therefore, there is insufficient information to identify the species. Both species, long-beaked common dolphins and short-beaked common dolphins, utilize much of the same habitat and overlap in areas with the squid purse seine fishery; therefore, it is possible that either species could have been taken and NMFS cannot eliminate the possibility that a long-beaked common dolphin was seriously injured during this event. Extrapolating these sightings to the entire fishery and averaging over the four years of available information, the estimated annual serious injury or mortality is 22 long-beaked common dolphins (draft 2009 SAR). The current PBR for long-beaked common dolphins is 95/year (final 2008 SAR). Therefore the serious injury or mortality rate is 23 percent, meeting the Category II criteria (less than 50 percent and greater than 1 percent of the stock's PBR).

Comment 33: The California Department of Fish and Game (CDFG) disagreed with NMFS' proposal to elevate the ''California spiny lobster trap'' fishery from Category III to Category II. The CDFG stated that the report of the 2007 humpback whale entanglement event, submitted by CDFG to NMFS Southwest Region's stranding coordinator, was submitted with the emphasis that the report was a third hand report. The CDFG stated that this report was based on information provided to the CDFG biologist from friends who heard it from a recreational fisherman. CDFG assumed that neither the whale species nor the gear type was verified. Also, since the 2007 entanglement event occurred in the first week of July, CDFG had doubts as to whether the trap involved in the entanglement was a lobster trap.

Response: NMFS published criteria for evaluating reports from the LWDN in the proposed 2009 LOF (73 FR 33760, June 13, 2008). Each year, the LWDN receives reports of whales entangled in fishing gear. For some fisheries, particularly pot and trap fisheries, this is currently the only information NMFS has on which to assess the level of large whale entanglement in fisheries on the west coast. NMFS used the criteria to elevate four pot and trap fisheries to Category II in the 2009 LOF based upon interactions with humpback whales. NMFS acknowledged and identified the assumptions that need to be made in using the criteria in the proposed 2009 LOF.

When evaluating an entanglement event, NMFS' first criterion is whether a specific fishery has been positively identified as causing the entanglement (73 FR 33760, June 13, 2008). Different types of pot and trap gear have distinguishing characteristics (e.g., marking requirements on buoys) that make it possible to identify the gear to a particular fishery. NMFS second criterion is whether the fishery operates in the area and time when a humpback whale was reported entangled in pot and trap gear (73 FR 33760, June 13, 2008). Most pot and trap fisheries have discrete seasons, thus gear can be associated with certain fisheries in certain areas based on the time of year.

NMFS proposed to elevate the spiny lobster fishery to Category II on the 2010 LOF based on available information that indicated a humpback whale was observed entangled in spiny lobster gear on July 10, 2007, south of Newport Harbor, CA. The available information came from a staff member from CDFG and was thus considered reliable. Unfortunately, there are no photographs available to aid in identification of the fishing gear that entangled the whale and no other information available. In CDFG's comment they state that they do not consider the report to be reliable. The information on the humpback whale and gear came not from a CDFG staff member, so CDFG does not have confidence in the accuracy of the information. NMFS spoke with staff from CDFG to discuss the sighting and the spiny lobster fishery. Based upon those discussions and memos from CDFG, NMFS agrees that the sighting of a humpback entangled in spiny lobster gear can not be considered reliable and does not meet our first criterion for re-categorizing fisheries based upon LWDN reports.

NMFS then considered the report using the second criterion to propose the fishery's elevation to Category II: does the fishery operate at a time and area consistent with the observed entanglement (73 FR at 33772, June 13, 2008). The season for the spiny lobster trap fishery is October through March and occurs in the southern California Bight, so the reported entanglement was observed almost 4 months after the fishery closed, within the geographic region in which the spiny lobster trap fishery occurs. The information provided by CDFG and a review of the fishery indicates that neither of the two criteria for re-categorizing the spiny lobster fishery have been met. Based on this information, NMFS is not elevating this fishery to Category II in the final 2010 LOF. This fishery will remain a separate Category III fishery. NMFS will continue to evaluate reports of pot and trap interactions with large whales on the west coast and may consider elevating this fishery in the future if additional information or analysis supports such a change.

Comment 34: The CBD agreed with NMFS' proposal to reclassify the ''CA spiny lobster trap'' fishery as a Category II. The CBD further asserted that all pot or trap fisheries that occur within the range of the humpback whale should be classified as Category II until and unless observer coverage demonstrates that they do not pose a risk of entanglement to the species.

Response: Since the publication of the proposed 2010 LOF, NMFS has received information to suggest that re-categorizing the spiny lobster fishery to Category II at this time is not supported by the available data. Please see response to comment number 33 above. Regarding the recommendation that all pot or trap fisheries be placed in Category II until observers can show that the fisheries do not pose a threat to humpback whales, NMFS received and responded to a similar comment from the CBD on the final 2009 LOF (73 FR 73032, December 1, 2008; comment/response 29). It may not be appropriate to place observers onboard fishing vessels in pot and trap fisheries to detect interactions with marine mammals. Observers in pot and trap fisheries have very limited ability to detect interactions with the gear. In most instances, an entangled large whale is likely to swim away with gear and not be observed on the fishing grounds. Therefore alternative monitoring methods are needed. NMFS continues to work with other government agencies, the scientific and fishing communities, and the public to collect information on entanglements events and methods for tracking interactions between marine mammals and pot and trap gear. NMFS is continuing to address the problem of large whale entanglements and is committing resources to the issue, including hiring additional staff to help advance NMFS' Southwest Region's efforts on this issue. As noted in previous LOFs, when and if additional information and/or analysis become available, NMFS would consider reclassifying of pot and trap fisheries, as appropriate.

Comment 35: The MMC reiterated its previous recommendation that NMFS classify all West Coast pot/trap fisheries (i.e., those off Washington, Oregon, and California) as Category II. The MMC asserted that dividing and renaming the West Coast pot/trap fisheries based on observed entanglement events is not appropriate, given the small fraction of entanglements likely to be observed and the fact that the gear cannot be distinguished. The MMC also stated that the existing evidence on large whale entanglement events is not sufficient to make an informed assessment regarding the entanglement rates for pot/trap fisheries on the West Coast.

Response: Please see the responses to comments 33 and 34 above. NMFS received a similar comment from the MMC on the 2009 LOF. As noted in NMFS' response to comments on the 2009 LOF (73 FR 73032, December 1, 2008; comment/response 30), NMFS must use the best available information in making recommendations for the LOF. NMFS reviewed all of the available data on entangled large whales off the U.S. West Coast, the distribution of species entangled, and the spatial and temporal characteristics of pot and trap fisheries to develop criteria for categorizing fisheries. NMFS is continuing to work on methods for improved data collection and analysis and will consider re-categorizing additional pot and trap fisheries when and if more information and/or analysis become available, as appropriate. As noted in the response to comment 34, NMFS is continuing to dedicate resources to address the issue of large whale entanglements in fishing gear, including hiring additional staff to help NMFS' Southwest Region's ongoing efforts.

Comment 36: The MMC concurred with NMFS' proposal to reclassify the ''CA pelagic longline'' fishery from Category II to Category III.

Response: NMFS acknowledges this comment and has reclassified the ''CA pelagic longline'' fishery from Category II to Category III in this final rule.

Comment 37: The CBD urged NMFS to maintain 100 percent observer coverage in the ''CA pelagic longline'' fishery, as recent proposals to expand that fishery if brought to fruition are likely to result in significant increases in interactions with marine mammals.

Response: The ''CA pelagic longline'' fishery is re-categorized as a Category III fishery in the 2010 LOF due to the low observed bycatch of marine mammals. The current fishery has 100 percent observer coverage. If a proposed shallow-set longline fishery exempted fishing permit is approved, one of the conditions of issuing the permit would be 100 percent observer coverage. There are currently no other proposals to expand the existing ''CA pelagic longline'' fishery.

Comment 38: The MMC responded to NMFS' request for public comment and information on two large whale entanglements in gillnet gear in 2007. The MMC asserted that observer coverage is insufficient to provide reliable data on marine mammal take rates in both of the Category II California set gillnet fishery (3.5–in mesh) for halibut, white seabass, and other species or the California drift gillnet fisheries (mesh size ≥3.5 in and <14 in) for yellowtail, barracuda, and white seabass. The MMC further asserted that the size of these fisheries and the number of species they take warrant increased observer coverage. For that purpose, the MMC recommended that NMFS develop and implement expanded monitoring programs for the ''CA halibut, white seabass, and other

species set gillnet fishery (3.5–in mesh)'' and the ''CA yellowtail, barracuda, and white seabass drift gillnet fisheries (mesh size ≥3.5 in and <14 in)'' fisheries.

Response: NMFS is working to expand observer coverage of the California state gillnet fisheries. NMFS plans to place observers on the California set gillnet fishery (3.5–in mesh) for halibut, white seabass, and other species beginning January 2010. Available observer funds should yield coverage of up to 25 percent. NMFS plans to place observers on the California drift gillnet fisheries (mesh size ≥3.5 in and <14 in) for yellowtail, barracuda, and white seabass beginning in summer 2010 if observer funds are available.

NMFS did not receive additional information from the public on the two large whale entanglements in 2007 that NMFS believes may have been caused by either the California set gillnet fishery (3.5–in mesh) for halibut, white seabass, and other species or the California drift gillnet fishery (mesh size ≥3.5 in and <14 in). NMFS will continue to evaluate new and existing entanglement information to better understand the nature of large whale interactions with fishing gear along the U.S. West Coast. When and if new information or analysis is available, NMFS will assign these entanglements to the appropriate fisheries. At this time, these reports will continue to be listed as entangled in unknown gillnet gear.

Comments on Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Comment 39: The MMC recommended NMFS review the available information on state and Federal permit holders in Northeast and Mid-Atlantic fisheries and revise the published LOF to accurately reflect the number of active vessels and participants in each fishery. The MMC noted that NMFS revised its estimates of the number of participants for Northeast and Mid-Atlantic fisheries in the proposed 2010 LOF based on state and Federal permit information without removing any duplication (i.e., individuals holding both state and Federal permits for a particular fishery) or accounting for inactive permits. Thus, although the information previously included in the LOF may have underestimated the number of participants, the new information likely overestimates the level of participation in some fisheries.

Response: NMFS concurs that the updated number of estimated participants for each fishery may complicate management efforts due to uncertainty around the number of active versus passive participants and duplicative permit information. Therefore, NMFS will not make the changes proposed in the proposed 2010 LOF (74 FR 27739, June 11, 2009) and will revert back to the estimates of Federal permits from the 2009 LOF (73 FR 73032. December 1, 2008) in this final 2010 LOF for the ''Mid-Atlantic gillnet,'' Northeast sink gillnet,'' ''Atlantic mixed species trap/pot,'' ''Mid-Atlantic menhaden purse seine,'' ''Mid-Atlantic haul/beach seine,'' ''Mid-Atlantic mid-water trawl,'' ''Northeast bottom trawl,'' ''Northeast mid-water trawl,'' and ''Gulf of Maine Atlantic herring purse seine'' fisheries. NMFS will work with the relevant state agencies to obtain more reliable information on state permits for these fisheries to be incorporated in future LOFs. Based on updated information received from the Virginia Marine Resource Commission on the 2008 license year, the estimated number of Virginia Pound Net fishery participants will be updated to ''41.'' In summary, the estimated numbers of fishery participants in this final rule, for the previously mentioned fisheries, are: Category I ''Mid-Atlantic gillnet'' fishery to ≤370; Category I ''Northeast sink gillnet'' fishery to 341; Category II ''Atlantic mixed species trap/pot'' fishery to unknown; Category II ''Mid-Atlantic menhaden purse seine'' fishery to 22; Category II ''Mid-Atlantic haul/beach seine'' fishery to 25; Category II ''Mid Atlantic mid water trawl'' fishery to 620; Category II ''Northeast bottom trawl'' fishery to 1052; Category II ''Northeast mid-water trawl'' fishery to 17; Category II ''VA pound net'' fishery to 41; and Category III ''Gulf of Maine Atlantic herring purse seine'' fishery to 30.

Comment 40: The MMC concurred with NMFS' proposal to add the Gulf of Maine/Bay of Fundy harbor porpoise stock to the list of species and stocks incidentally killed or injured in the Category II ''Northeast bottom trawl'' fishery. The MMC further noted that the combined mortality of harbor porpoises from this stock in the Category I ''Northeast sink gillnet,'' Category I ''Mid-Atlantic gillnet,'' and Category II ''Northeast bottom trawl'' fisheries exceeds the stock's PBR level. For that reason, the MMC commented that NMFS should recognize the harbor porpoise as a stock incidentally injured or killed in the ''Northeast bottom trawl'' fishery and work jointly with the Harbor Porpoise Take Reduction Team and the Atlantic Trawl Gear Take Reduction Team to reduce the stock's total incidental serious injury and mortality levels.

Response: NMFS acknowledges the comment and will continue to monitor all marine mammal takes within the ''Northeast bottom trawl'' fishery. NMFS recognizes the harbor porpoise as a stock incidentally injured or killed in the ''Northeast bottom trawl'' fishery, as depicted by its current listing in Table 2 of the 2010 LOF. NMFS recently proposed modifications to the Harbor Porpoise Take Reduction Plan (74 FR 36058, July 21, 2009) to further reduce the serious injury and mortality of harbor porpoises from incidental interactions with Northeast sink and Mid-Atlantic gillnet fisheries to below the stock's PBR level. NMFS will continue to coordinate with the Harbor Porpoise Take Reduction Team and the Atlantic Trawl Gear Take Reduction Team to ensure that the stock's total incidental serious injury and mortality is reduced to below its PBR level and, ultimately, to an insignificant level approaching a zero mortality and serious injury rate.

Comment 41: The MMC recommended that NMFS not remove the superscript ''1'' after Gulf of Maine/Bay of Fundy harbor porpoise in its listing of the Category I ''Mid-Atlantic gillnet'' fishery until NMFS has more definitive information indicating that the number of removals is, and is likely to remain, below 50 percent of the stock's PBR level. The MMC asserted that it would be premature to conclude that the taking of harbor porpoises is no longer driving the classification of the ''Mid-Atlantic gillnet'' fishery. The MMC noted that the estimated take is only a single percentage point (or 11 animals) below the threshold that would trigger a Category I classification. The MMC asserted that, given the level of observer coverage in the fishery (2.2 percent) and the resulting uncertainty around the estimates of incidental serious injury and mortality, this difference is not significant or justification for removal of the superscript notation. The MMC further noted that NMFS' proposal fails to recognize the increasing trend in the deaths of harbor porpoises in this fishery in recent years.

Response: The superscript ''1'' in Table 3 of the LOF is defined to depict ''Fishery classified based on serious injuries of this stock which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR.'' According to the 2008 SAR, the average annual harbor porpoise (Gulf of Maine/Bay of Fundy stock) mortality and serious injury in the ''Mid-Atlantic

gillnet'' fishery from 2002 to 2006 was 299, which represented the 4–year average estimate from 2003, 2004, 2005, and 2006. Using this average, the fishery was responsible for taking 49 percent of the stock's PBR, which is not greater than 50 percent. As the commenter stated, regulations (50 CFR 229.2) define a Category I fishery as ''one that is by itself responsible for the annual removal of 50 percent or more of any stock's potential biological removal level'' and a Category II fishery as ''is by itself responsible for the annual removal of between 1 and 50 percent, exclusive, of any stock's potential biological removal level.'' Therefore, given the specific regulatory reference to 50 percent for the cut off for Category I, while harbor porpoises are being taken in this fishery, this stock currently does not qualify as driving the Category I definition for the ''Mid-Atlantic gillnet'' fishery. Harbor porpoise serious injuries and mortalities were responsible for the elevation of the ''Mid-Atlantic gillnet'' fishery from Category III to Category II on the 1996 LOF (December 28, 1995; 60 FR 67063) but serious injuries and mortalities of coastal bottlenose dolphins were responsible for the elevation of the fishery to Category I on the 2003 LOF (July 15, 2003; 68 FR 41725). Currently, coastal bottlenose dolphin serious injuries and mortalities still drive the Category I definition for this fishery. The placement of the superscript for Category I and Category II fisheries is evaluated on a yearly basis and if in the future harbor porpoise serious injuries and mortalities in this fishery increase to 50 percent of PBR or greater, the superscript will be added to Table 2.

Comment 42: The GSSA requested that NMFS consider that the proposal to update the estimated number of vessels or participants in the 2010 proposed LOF to 7,596 for the ''Mid-Atlantic gillnet'' fishery is counting the number of North Carolina state permits that are issued to thousands of people who use gillnets for personal consumption in North Carolina bays and sounds.

Response: NMFS will work with state agencies to obtain more specific state permit information. See response to number 39 for additional discussion on this topic.

Comment 43: The CBD reiterated previous years' comments stating concerns regarding NMFS' failure to adequately classify certain Gulf of Mexico fisheries as Category I or Category II in light of known or estimated mortality and serious injury to marine mammals from those fisheries. Specifically, they suggested the ''Gulf of Mexico menhaden purse seine fishery'' and the ''Gulf of Mexico gillnet fishery'' be elevated from Category II to Category I, based on known or likely impacts to bottlenose dolphin stocks. The CBD expressed pleasure that NMFS proposed to reclassify the Gulf of Mexico blue crab trap/pot fishery. Finally, the CBD stated that NMFS should make it a high priority to place observer coverage on the ''Gulf of Mexico menhaden purse seine'' fishery and convene a take reduction team to address bottlenose dolphin takes in the Gulf from this and other fisheries.

Response: The commenter incorrectly states that NMFS has proposed to elevate the blue crab trap/pot fishery. This fishery remains a Category III on the final 2010 LOF. NMFS does not believe elevation of the Gulf of Mexico blue crab trap/pot, menhaden purse seine, or gillnet fisheries is supported by currently available information. There is no observer program for these fisheries, and NMFS relies on stranding data and fishermen's self-reports to document fishery interactions with marine mammals. NMFS acknowledges that, while these sources show only a low level of interactions, these sources are unreliable and likely to be biased low. In addition, PBR is unknown for these stocks because of insufficient information on stock structure and abundance. NMFS will continue monitoring fishermen's self-reports and stranding data. Observer coverage for these fisheries also remains a priority if resources become available.

In the ''Gulf of Mexico blue crab trap/pot'' fishery, stranding data indicate there were two confirmed bottlenose dolphin interactions with crab pot fishing gear between 2002–2006, one animal which was released alive. In the same time period, four dead bottlenose dolphins stranded with rope or rope marks that may have been from trap/pot gear, but cause of death could not be determined.

The ''Gulf of Mexico menhaden purse seine'' fishery was observed by researchers from Louisiana State University in 1992, 1994, and 1995. The observers documented nine bottlenose dolphin captures, three of which were mortalities. Using observed and total fishery effort data, the number of takes was linearly extrapolated to an estimate of 68 animals. On the basis of this information, the fishery was elevated from Category III to Category II on the 1999 LOF (64 FR 9067, February 24, 1999). Since that time, there has been no observer coverage in this fishery. Fishermen's self-reports through the MMAP reveal 11 dolphin mortalities in the menhaden purse seine fishery from 2000–2008: two in 2005, one in 2004, two in 2002, one in 2001 and five in 2000. Nine of these mortalities were confirmed to be bottlenose dolphins. However, it is not possible to extrapolate these numbers to obtain an estimate of total takes in this fishery.

No marine mammal mortalities associated with gillnet fisheries in the Gulf of Mexico have been reported through the MMAP; however, four dolphin mortalities occurred in gillnet research gear between 2003–2007. Stranding data also suggests that marine mammal interactions with gillnets do occur, causing mortality and serious injury. NMFS acknowledges that stranding data likely underestimates the extent of fishery-related mortality and serious injury. Interpreting the data is difficult due to varying ability among the stranding network to detect and respond to strandings in all areas and accurately document human interactions and the condition of the carcass when stranded. To address this, NMFS conducted multiple stranding and human interaction workshops in Texas, Louisiana, Mississippi and Alabama in 2008, and provided additional human interaction training to the Southeast Stranding Network at their Biennial Conference in 2009. In addition, in 2009 NMFS awarded nearly $292,000 in Prescott Grants to increase stranding network capabilities throughout the Gulf of Mexico. Prescott Grant 2010 Southeast Regional priorities include research into ways to enhance stranding response coverage, capability, Level A data collection, and number of necropsies in areas where there is little or no coverage, including along the Northern Gulf of Mexico.

Because population size and PBR are undetermined for the three coastal stocks and most of the bay, sound, and estuary stocks of bottlenose dolphins, NMFS is unable to assess the population level impacts of serious injury and mortality from fisheries to determine whether annual mortality is greater than or equal to 50 percent of PBR. Thus, the currently available information dues not support convening a TRT.

Comment 44: The MMC reiterated its previous recommendations on the 2003 through 2009 LOFs that NMFS expedite its investigation of bottlenose dolphin stock structure in the Gulf of Mexico, expand its efforts to collect reliable information on serious injury and mortality rates of marine mammals incidental to Gulf of Mexico fisheries, and reevaluate the classification of Gulf of Mexico fisheries as information becomes available.

Response: NMFS agrees that it is important to further investigate stock structure and abundance of bottlenose

dolphins in the Gulf of Mexico. PBR is undetermined for most Gulf of Mexico stocks because the population size estimates are more than 8 years old and resources are unavailable to conduct additional surveys. Collecting reliable information on serious injury and mortality of marine mammals in the Gulf of Mexico is also essential. However, there are currently no resources to fund observer programs in the Gulf of Mexico fisheries. Therefore, NMFS is focusing on building volunteer stranding network capacity in the Gulf and increasing the level and quality of stranding response and has taken concrete steps to improve stranding capacity, as discussed in the response to Comment 43 above. NMFS expects these efforts will increase the effectiveness of the stranding networks and better inform management decisions in the future.

Summary of Changes to the LOF for 2010

The following summarizes changes to the LOF for 2010 in fishery classification, fisheries listed in the LOF, the number of participants in a particular fishery, and the species and stocks that are incidentally killed or injured in a particular fishery. The classifications and definitions of U.S. commercial fisheries for 2010 are identical to those provided in the LOF for 2009 with the changes outlined below.

Commercial Fisheries in the Pacific Ocean

Fishery Classification

The ''American Samoa longline'' fishery is elevated from Category III to Category II.

The ''AK southeast salmon purse seine'' fishery is reclassified from Category II to Category III.

The ''CA pelagic longline'' fishery is reclassified from Category II to Category III.

Addition of Fisheries to the LOF

The ''CA spiny lobster trap'' fishery is added as a separate Category III fishery (split from the ''CA spiny lobster, coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery, renamed the ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery in this final rule).

The ''HI shortline'' fishery is added as a Category II fishery.

Fishery Name and Organizational Changes and Clarifications

The Category III ''CA spiny lobster, coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery is renamed to the ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery.

List of Species and Stocks That are Incidentally Killed or Injured

The stock name for false killer whales incidentally killed or injured in the ''HI deep-set (tuna-target) longline/set line'' fishery is changed from ''HI'' to ''HI pelagic.''

Pantropical spotted dolphin (stock unknown) is added to the list of species and stocks incidentally killed or injured in the Category I ''HI deep-set (tuna target) longline/set line'' fishery.

Spinner dolphin (HI) is removed from the list of species and stocks incidentally killed or injured in the Category I ''HI deep-set (tuna target) longline/set line'' fishery.

Pantropical spotted dolphin (stock unknown) is removed from the list of species and stocks incidentally killed or injured in the Category II ''HI shallow-set (swordfish target) longline/set line'' fishery.

False killer whale (stock unknown) is added to the list of species and stocks incidentally killed or injured in the ''American Samoa longline'' fishery (elevated to Category II in this final rule).

Humpback whale (Central North Pacific) is removed from the list of species and stocks incidentally killed or injured in the Category III ''AK southeast salmon purse seine'' fishery.

The superscript ''1'' is removed after humpback whale (Central North Pacific) and humpback whale (Western North Pacific) in the list of species and stocks incidentally killed or injured in the Category II ''AK Bering Sea Aleutian Islands Pollock trawl'' fishery to correct a typographical error.

The stock name for Northern fur seals is changed on the list of species and stocks incidentally killed or injured in the Category II ''AK Bering Sea, Aleutian Islands flatfish trawl'' fishery from ''Eastern North Pacific'' to ''Eastern Pacific.''

Short-finned pilot whale (CA/OR/WA) is removed from the list of species and stocks incidentally killed or injured in the Category II ''CA squid purse seine'' fishery.

A superscript ''1'' is added after long-beaked common dolphin (CA) in the list of species and stocks incidentally killed or injured in the Category II ''CA squid purse seine'' fishery.

Gray whale (Eastern North Pacific) is added to the list of species and stocks incidentally killed or injured in the Category III ''CA spiny lobster'' fishery.

CA sea lion (U.S.) is removed from the list of species and stocks incidentally killed or injured in the ''CA pelagic longline'' fishery.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Name and Organizational Changes and Clarifications

The description of the Category I ''Mid-Atlantic gillnet'' fishery is replaced with the following: ''The Category I Mid-Atlantic gillnet fishery targets monkfish, spiny dogfish, smooth dogfish, bluefish, weakfish, menhaden, spot, croaker, striped bass, large and small coastal sharks, Spanish mackerel, king mackerel, American shad, black drum, skate spp., yellow perch, white perch, herring, scup, kingfish, spotted seatrout, and butterfish. The fishery uses drift and sink gillnets, including nets set in a sink, stab, set, strike, or drift fashion, with some unanchored drift or sink nets used to target specific species. The dominant material is monofilament twine with stretched mesh sizes from 2.5 12 in (6.4 30.5 cm), and string lengths from 150 8,400 ft. (46 2,560 m). This fishery operates year-round west of a line drawn at 72° 30′ W. long. south to 36° 33.03′ N. lat. (VA/NC border) and east to the eastern edge of the EEZ and north of the NC/SC border, not including waters where Category II and Category III inshore gillnet fisheries operate in bays, estuaries, and rivers. This fishery includes any residual large pelagic driftnet effort in the mid-Atlantic, any shark and dogfish gillnet effort in the mid-Atlantic, and those North Carolina small and large mesh beach-anchored gillnets formerly placed in the Category II Mid-Atlantic haul/beach seine fishery in the mid-Atlantic zone described. This NC component fishing effort is prosecuted right off the beach (6 ft [1.8 m]) or in nearshore coastal waters to offshore waters (250 ft [76 m]). Gear in this fishery is managed by several Federal and interstate FMPs managed by the Atlantic States Marine Fisheries Commission (ASMFC), the Atlantic Large Whale Take Reduction Plan (ALWTRP), the Harbor Porpoise Take Reduction Plan (HPTRP), and the Bottlenose Dolphin Take Reduction Plan (BDTRP). Fisheries are primarily managed by total allowable catch limits; individual trip limits (quotas); effort caps (limited number of days at sea per vessel); time and area closures; and gear restrictions and modifications.''

The description of the Category II ''Mid-Atlantic haul/beach seine'' fishery is replaced with the following: ''The Category II Mid-Atlantic haul/beach seine fishery targets striped bass, mullet, spot, weakfish, sea trout, bluefish, kingfish, and harvestfish using seines

with one end secured (e.g., swipe nets and long seines) and seines secured at both ends or those anchored to the beach and hauled up on the beach. The beach seine system also uses a bunt and a wash net that are attached to the beach and extend into the surf. The fishery occurs in waters west of 72° 30′ W. long. and north of a line extending due east from the NC/SC border. The only haul/beach seine gear operating in NC included in this Category II fishery is the ''Atlantic Ocean striped bass beach seine fishery'' during the winter, as regulated by NC Marine Fisheries Commission rules (NCDMF) and NCDMF proclamations. NCDMF defines a beach seine operating under the Atlantic Ocean Striped Bass beach seine fishery as a ''swipe net constructed of multifilament, multifiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place, and one end of the beach seine is attached to the shore at all times during the operation.'' All other NC small and large mesh beach-anchored gillnets with webbing constructed of all monofilament material or a combination of monofilament and multifilament material were moved to the Category I Mid-Atlantic gillnet fishery in the final 2009 LOF because their construction and fishing technique were more similar to a gillnet than a traditional beach seine. A description of the gear and fishing practices for the haul/beach seine and small and large mesh beach-anchored gillnets operating in NC are found in the final 2008 LOF (72 FR 66048; November 27, 2007) and final 2009 LOF (73 FR 73032, December 1, 2008). In addition to the NC component as described above, the 'Mid-Atlantic haul/beach seine' fishery also includes haul/beach seining in other areas of the mid-Atlantic, including NY through VA. Because the net materials and fishing practices of the Atlantic Ocean striped bass beach seine fishery in NC are different from haul seining in other areas, NMFS may consider splitting this fishery in the future. The Mid-Atlantic haul/beach seine fishery is managed under several state and Interstate FMPs and is an affected fishery under the BDTRP.''

Number of Vessels/Persons

Based on public comments on the proposed 2010 LOF, NMFS agreed that the proposed updates to the estimated number of vessels/persons in several Northeast and Mid-Atlantic fisheries by including available state permit information may complicate management efforts due to uncertainty around the number of active versus passive participants and duplicative permit information. Therefore, NMFS is not finalizing those proposed updates in this final rule. The number of vessels/persons in Atlantic fisheries remains the same as those reported in the 2009 LOF.

The estimated number of vessels or persons in the Category II ''VA pound net'' fishery is updated from 187 to 41.

List of Species and Stocks That are Incidentally Killed or Injured

Harbor porpoise (Gulf of Maine/Bay of Fundy (GME/BF)) is added to the list of marine mammal species and stocks incidentally killed or injured in the Category II ''Northeast bottom trawl fishery.

Fin whale (Western North Atlantic (WNA)) is removed from the list of species and stocks incidentally killed or injured in the Category I ''Northeast/Mid-Atlantic American lobster trap/pot'' fishery.

The superscript ''1'' after humpback whale (Gulf of Maine) and minke whale (Canadian east coast) is removed from the list of species and stocks incidentally killed or injured in the Category I ''Northeast/Mid-Atlantic American lobster trap/pot'' fishery.

The superscript ''1'' after minke whale (Canadian east coast), humpback whale (Gulf of Maine), and North Atlantic right whale (WNA) is removed from the list of species and stocks incidentally killed or injured in the Category I ''Northeast sink gillnet'' fishery.

The superscript ''1'' after harbor porpoise (GME/BF) and humpback whale (Gulf of Maine) is removed from the list of species and stocks incidentally killed or injured in the Category I ''Mid-Atlantic gillnet'' fishery.

Pygmy sperm whale (WNA) is removed from the list of species and stocks incidentally killed or injured in the Category I ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline'' fishery.

Commercial Fisheries on the High Seas

Removal of Fisheries

All unspecified high seas fisheries for all gear types are removed, except for trawl gear. Four trawl gear HSFCA permits remain valid for an unspecified fishery.

Number of HSFCA Permits

As stated in the preamble under ''How Does NMFS Authorize U.S. Vessels to Participate in High Seas Fisheries?,'' some fishers possess valid HSFCA permits for gear types that are no longer authorized for use (therefore, the fishers are unable to fish under the permit). For this reason, the number of HSFCA permits updated below and displayed in Table 3 of this final rule may not accurately represent actual fishing effort by U.S. vessels on the high seas.

The estimated number of HSFCA permits in the High Seas Atlantic Highly Migratory Species fishery is updated for the following gear types: longline, from 75 to 72; trawl, from 3 to 2; handline/pole-and-line from 2 to 1; and troll, from 5 to 7.

The estimated number of HSFCA permits in the High Seas Pacific Highly Migratory Species fishery is updated for the following gear types: drift gillnet, from 5 to 4; trawl, from 14 to 3; purse seine, from 5 to 8; pot, from 8 to 7; longline, from 56 to 62; handline/pole and line, from 18 to 22; liners not elseware identified (NEI), from 3 to 1; multipurpose vessels, from 9 to 7; and troll, from 222 to 249.

The estimated number of HSFCA permits in the High Seas South Pacific Albacore Troll fishery is updated for the following gear types: trawl, from 5 to 2; longline, from 12 to 11; handline/pole and line, from 7 to 8; troll, from 45 to 53; multipurpose vessels, from 6 to 4.

The estimated number of HSFCA permits in the High Seas South Pacific Tuna fishery is updated for the following gear types: purse seine from 23 to 36; longline, from 2 to 3; troll, from 1 to 3.

The estimated number of HSFCA permits in the High Seas Western Pacific Pelagic fishery is updated for the following gear types: trawl, from 11 to 4; purse seine, from 4 to 3; pot, from 8 to 7; handline/pole and line, from 8 to 9; liners NEI, from 2 to 1; multipurpose vessels, from 7 to 5.

List of Species That are Incidentally Killed or Injured

The stock name for false killer whales incidentally killed or injured in the ''High Seas Western Pacific Pelagic (Deep-set component)'' fishery is changed from ''HI'' to ''unknown.'' This fishery is a component of the ''HI deep-set (tuna target) longline/set line'' fishery operating in U.S. waters, which interacts with the ''HI pelagic'' stock of false killer whales. While the animals in this stock are thought to move across the EEZ boundary into the high seas, the stock is currently defined as occurring from 75nmi to the EEZ boundary (2008 SAR). NMFS truncated the stock boundary as ending at the 200nmi EEZ line because of the mandate in section 117 of the MMPA (16 U.S.C. 1386) for NMFS to create SARs and calculate PBR

levels for marine mammal stocks occurring ''in waters under the jurisdiction of the United States.'' Therefore, to be consistent with the stock definition in the final 2008 SARs, NMFS has changed the stock name to ''unknown'' at this time. See the response to comment 17 above for additional information.

Pantropical spotted dolphin (stock unknown) is added to the list of species and stocks incidentally killed or injured in the Category II ''High Seas Western Pacific Pelagic (Deep-set component)'' fishery. This fishery is a component of the ''HI deep-set (tuna target) longline/set line'' fishery operating in U.S. waters.

Spinner dolphin (HI) is removed from the list of species and stocks incidentally killed or injured in the Category I ''High Seas Western Pacific Pelagic (Deep-set component)'' fishery. This fishery is a component of the ''HI deep-set (tuna target) longline/set line'' fishery component operating in U.S. waters.

Pantropical spotted dolphin (stock unknown) is removed from the list of species and stocks incidentally killed or injured in the Category II ''High Seas Western Pacific Pelagic (Shallow-set component)'' fishery. This fishery is a component of the ''HI shallow-set (swordfish target) longline/set line'' fishery operating in U.S. waters.

List of Fisheries

The following tables set forth the final list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. In Tables 1 and 2, the estimated number of vessels/persons in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the most recent LOF is used. For high seas fisheries, Table 3 lists the number of currently valid HSFCA permits held by fishers. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data at this time.

Tables 1, 2, and 3 also list the marine mammal species and stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, disentanglement network data, and fisher reports. This list includes all species and stocks known to be injured or killed in a given fishery, but also includes species and stocks for which there are anecdotal records of an injury or mortality. Additionally, species identified by logbook entries may not be verified. NMFS has designated those stocks driving a fishery's classification (i.e., the fishery is classified based on serious injuries and mortalities of a marine mammal stock greater than 50 percent [Category I], or greater than 1 percent and less than 50 percent [Category II], of a stock's PBR) by a ''[1]'' after the stock's name.

In Tables 1 and 2, there are several fisheries classified in Category II that have no recent documented injuries or mortalities of marine mammals, or that did not result in a serious injury or mortality rate greater than 1 percent of a stock's PBR level. NMFS has classified these fisheries by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2. NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by a ''2'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the EEZ boundary, operating within U.S. waters and on the high seas. These fisheries, while listed on both Table 1 or 2, and 3, are not separate fisheries. Instead, they are components of a single fishery organized on Table 1, 2, or 3 by geographic region. NMFS has designated those fisheries in each Table by an ''*'' after the fishery's name.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; Table 3 lists commercial fisheries on the High Seas; Table 4 lists fisheries affected by Take Reduction Plans or Teams.

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Table 1 - List of Fisheries -- Commercial Fisheries in the Pacific Ocean

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
CATEGORY I		
GILLNET FISHERIES:		
CA/OR thresher shark/swordfish drift gillnet (≥14 in mesh) *	85	California sea lion, U.S. Long-beaked common dolphin, CA Northern elephant seal, CA breeding Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA[1]
LONGLINE/SET LINE FISHERIES:		
HI deep-set (tuna target) longline/set line *	129	Blainville's beaked whale, HI Bottlenose dolphin, HI False killer whale, HI pelagic[1] Humpback whale, Central North Pacific Pantropical spotted dolphin, stock unknown Risso's dolphin, HI Short-finned pilot whale, HI Striped dolphin, HI
CATEGORY II		
GILLNET FISHERIES:		
CA halibut/white seabass and other species set gillnet (>3.5 in mesh)	58	California sea lion, U.S.[1] Harbor seal, CA[1] Long-beaked common dolphin, CA Northern elephant seal, CA breeding Sea otter, CA Short-beaked common dolphin, CA/OR/WA
CA yellowtail, barracuda, and white seabass drift gillnet fishery (mesh size ≥3.5 in and <14 in)	24	California sea lion, U.S. Long-beaked common dolphin, CA[1] Short-beaked common dolphin, CA/OR/WA
AK Bristol Bay salmon drift gillnet[2]	1,862	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Spotted seal, AK Steller sea lion, Western U.S.

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK Bristol Bay salmon set gillnet[2]	983	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK
AK Cook Inlet salmon set gillnet	738	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Humpback whale, Central North Pacific[1] Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	571	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA[1] Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA[1] Harbor seal, GOA Sea otter, Southwest AK Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet[2]	162	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet[2]	115	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK Harbor porpoise, GOA[1] Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Sea Otter, South Central AK Steller sea lion, Western U.S.[1]
AK Southeast salmon drift gillnet	476	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific[1] Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet[2]	166	Gray whale, Eastern North Pacific Harbor seal, Southeast AK Humpback whale, Central North Pacific (Southeast AK)

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA[1] Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Cook Inlet salmon purse seine	82	Humpback whale, Central North Pacific[1]
AK Kodiak salmon purse seine	370	Humpback whale, Central North Pacific[1]
CA anchovy, mackerel, sardine purse seine	63	Bottlenose dolphin, CA/OR/WA offshore[1] California sea lion, U.S. Harbor seal, CA
CA squid purse seine	64	Long-beaked common dolphin, CA[1] Short-beaked common dolphin, CA/OR/WA
CA tuna purse seine[2] *	10	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands flatfish trawl	34	Bearded seal, AK Harbor porpoise, Bering Sea Harbor seal, Bering Sea Killer whale, AK resident[1] Northern fur seal, Eastern Pacific Spotted seal, AK Steller sea lion, Western U.S.[1] Walrus, AK
AK Bering Sea, Aleutian Islands pollock trawl	95	Dall's porpoise, AK Harbor seal, AK Humpback whale, Central North Pacific Humpback whale, Western North Pacific Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient[1] Minke whale, AK Ribbon seal, AK Spotted seal, AK Steller sea lion, Western U.S.[1]
LONGLINE/SET LINE FISHERIES:		
HI shallow-set (swordfish target) longline/ set line *	28	Bottlenose dolphin, stock unknown Bryde's whale, stock unknown Humpback whale, Central North Pacific[1] Risso's dolphin, stock unknown Sperm whale, stock unknown
American Samoa longline[2]	60	False killer whale, stock unknown
HI shortline[2]	11	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK Bering Sea, Aleutian Islands Pacific cod longline	54	Killer whale, AK resident[1] Ribbon seal, AK Steller sea lion, Western U.S.
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific[1] Humpback whale, Western North Pacific[1]
CA spot prawn pot	29	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
CA Dungeness crab pot[2]	625	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA
OR Dungeness crab pot	433	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
WA/OR/CA sablefish pot	155	Humpback whale, CA/OR/WA[1]
CATEGORY III		
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	824	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Harbor seal, GOA Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	986	None documented
CA set gillnet (mesh size <3.5 in)	304	None documented
HI inshore gillnet	5	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA/OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented
WA/OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK Southeast salmon purse seine	415	None documented in recent years
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	0	None documented
AK octopus/squid purse seine	0	None documented
AK roe herring and food/bait herring beach seine	4	None documented
AK roe herring and food/bait herring purse seine	361	None documented
AK salmon beach seine	31	None documented
AK salmon purse seine (excluding salmon purse seine fisheries listed as Category II)	936	Harbor seal, GOA
WA/OR sardine purse seine	42	None documented
HI Kona crab loop net	42	None documented
HI opelu/akule net	12	None documented
HI inshore purse seine	23	None documented
HI throw net, cast net	14	None documented
WA (all species) beach seine or drag seine	235	None documented
WA/OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA/OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA marine shellfish aquaculture	unknown	None documented
CA salmon enhancement rearing pen	>1	None documented
CA white seabass enhancement net pens	13	California sea lion, U.S.

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
HI offshore pen culture	2	None documented
OR salmon ranch	1	None documented
WA/OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries *	1,302 (102 AK)	None documented
AK salmon troll	2,045	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	88	None documented
Guam tuna troll	401	None documented
HI trolling, rod and reel	1,321	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	29	Killer whale, AK resident
AK Bering Sea, Aleutian Islands rockfish longline	0	None documented
AK Bering Sea, Aleutian Islands sablefish longline	28	None documented
AK Gulf of Alaska halibut longline	1,302	None documented
AK Gulf of Alaska Pacific cod longline	440	None documented
AK Gulf of Alaska rockfish longline	0	None documented
AK Gulf of Alaska sablefish longline	291	Sperm whale, North Pacific Steller sea lion, Eastern U.S.
AK halibut longline/set line (State and Federal waters)	2,521	Steller sea lion, Western U.S.
AK octopus/squid longline	2	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK State-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish)	1,448	None documented
WA/OR/CA groundfish, bottomfish longline/set line	367	None documented
WA/OR North Pacific halibut longline/set line	350	None documented
CA pelagic longline	6	Risso's dolphin, CA/OR/WA
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	9	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	93	Harbor seal, Bering Sea Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands rockfish trawl	10	None documented
AK Gulf of Alaska flatfish trawl	41	None documented
AK Gulf of Alaska Pacific cod trawl	62	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	62	Fin whale, Northeast Pacific Northern elephant seal, North Pacific Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	34	None documented
AK food/bait herring trawl	4	None documented
AK miscellaneous finfish otter or beam trawl	317	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	32	None documented
AK State-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
CA halibut bottom trawl	53	None documented
WA/OR/CA groundfish trawl	160-180	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, CA/OR/WA Steller sea lion, Eastern U.S.

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
WA/OR/CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK statewide miscellaneous finfish pot	293	None documented
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot	68	None documented
AK Bering Sea, Aleutian Islands crab pot	297	None documented
AK Gulf of Alaska crab pot	300	None documented
AK Gulf of Alaska Pacific cod pot	154	Harbor seal, GOA
AK Southeast Alaska crab pot	433	Humpback whale, Central North Pacific (Southeast AK)
AK Southeast Alaska shrimp pot	283	Humpback whale, Central North Pacific (Southeast AK)
AK shrimp pot, except Southeast	15	None documented
AK octopus/squid pot	27	None documented
AK snail pot	1	None documented
CA coonstripe shrimp, rock crab, tanner crab pot or trap	305	Gray whale, Eastern North Pacific Harbor seal, CA
CA spiny lobster	225	Gray whale, Eastern North Pacific
OR/CA hagfish pot or trap	54	None documented
WA Dungeness crab pot	288	Gray whale, Eastern North Pacific
WA/OR shrimp pot/trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	0	Hawaiian monk seal
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline/hand troll and mechanical jig	445	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK North Pacific halibut handline/hand troll and mechanical jig	228	None documented
AK octopus/squid handline	0	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	200	None documented
HI aku boat, pole, and line	4	None documented
HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish	300	Hawaiian monk seal
HI inshore handline	307	None documented
HI tuna handline	298	None documented
WA groundfish, bottomfish jig	679	None documented
Western Pacific squid jig	6	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	30	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	415	None documented
AK Southeast herring roe/food/bait pound net	6	None documented
WA herring brush weir	1	None documented
BAIT PENS:		
WA/OR/CA bait pens	13	California sea lion, U.S.
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	0	None documented
AK clam	156	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
WA herring spawn on kelp	4	None documented
AK dungeness crab	2	None documented
AK herring spawn on kelp	266	None documented
AK urchin and other fish/shellfish	570	None documented
CA abalone	0	None documented
CA sea urchin	583	None documented
HI black coral diving	1	None documented
HI fish pond	N/A	None documented
HI handpick	37	None documented
HI lobster diving	19	None documented
HI squiding, spear	91	None documented
WA/CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (2,702 AK)	Killer whale, stock unknown Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
HI charter vessel	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA nearshore finfish live trap/hook-and-line	93	None documented

List of Abbreviations and Symbols Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington; [1] Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3.

Table 2 - List of Fisheries -- Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
CATEGORY I		
GILLNET FISHERIES:		
Mid-Atlantic gillnet	>670	Bottlenose dolphin, WNA coastal[1] Bottlenose dolphin, WNA offshore Common dolphin, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine Long-finned pilot whale, WNA Minke whale, Canadian east coast Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	341	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF[1] Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, Gulf of Maine Minke whale, Canadian east coast North Atlantic right whale, WNA Risso's dolphin, WNA White-sided dolphin, WNA
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline *	94	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA[1] Mesoplodon beaked whale, WNA Northern bottlenose whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA[1]

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Harbor seal, WNA Humpback whale, Gulf of Maine Minke whale, Canadian east coast North Atlantic right whale, WNA[1]
CATEGORY II		
GILLNET FISHERIES:		
Chesapeake Bay inshore gillnet[2]	45	None documented in recent years
Gulf of Mexico gillnet[2]	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
NC inshore gillnet	94	Bottlenose dolphin, WNA coastal[1]
Northeast anchored float gillnet[2]	133	Harbor seal, WNA Humpback whale, Gulf of Maine White-sided dolphin, WNA
Northeast drift gillnet[2]	unknown	None documented
Southeast Atlantic gillnet[2]	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	30	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal[1] North Atlantic right whale, WNA
TRAWL FISHERIES:		
Mid-Atlantic mid-water trawl (including pair trawl)	620	Bottlenose dolphin, WNA offshore Common dolphin, WNA Long-finned pilot whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA[1]
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA[1] Long-finned pilot whale, WNA[1] Short-finned pilot whale, WNA[1] White-sided dolphin, WNA
Mid-Atlantic flynet[2]	21	None documented
Northeast mid-water trawl (including pair trawl)	17	Harbor seal, WNA Long-finned pilot whale, WNA[1] Short-finned pilot whale, WNA[1] White-sided dolphin, WNA

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
Northeast bottom trawl	1,052	Common dolphin, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA[1]
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal[1] West Indian manatee, FL[1]
Atlantic mixed species trap/pot[2]	unknown	Fin whale, WNA Humpback whale, Gulf of Maine
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	40-42	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal[1] Bottlenose dolphin, Western GMX coastal[1]
Mid-Atlantic menhaden purse seine[2]	22	Bottlenose dolphin, WNA coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal[1]
NC long haul seine	33	Bottlenose dolphin, WNA coastal[1]
STOP NET FISHERIES:		
NC roe mullet stop net	13	Bottlenose dolphin, WNA coastal[1]
POUND NET FISHERIES:		
VA pound net	41	Bottlenose dolphin, WNA coastal[1]
CATEGORY III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
DE River inshore gillnet	60	None documented in recent years
Long Island Sound inshore gillnet	20	None documented in recent years
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet	32	None documented in recent years

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
Southeast Atlantic inshore gillnet	unknown	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	972	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian manatee, FL
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf
Gulf of Mexico mixed species trawl	20	None documented
GA cannonball jellyfish trawl	1	None documented
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
U.S. Atlantic tuna purse seine *	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
LONGLINE/HOOK-AND-LINE FISHERIES:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented in recent years
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, Gulf of Maine
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX continental shelf

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
FL spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, WNA coastal
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	Bottlenose dolphin, WNA coastal
U.S. Mid-Atlantic eel trap/pot	>700	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	Gray seal, Northwest North Atlantic Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian East Coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net)	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, WNA coastal

List of Abbreviations and Symbols Used in Table 2: DE - Delaware; FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; MA - Massachusetts; NC - North Carolina; VA - Virginia; WNA - Western North Atlantic; [1] Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3.

Table 3 - List of Fisheries -- Commercial Fisheries on the High Seas

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
Category I		
DRIFT GILLNET FISHERIES:		
Pacific Highly Migratory Species * ^	4	Long-beaked common dolphin, CA Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA
LONGLINE FISHERIES:		
Atlantic Highly Migratory Species *+	72	Atlantic spotted dolphin, WNA Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA Mesoplodon beaked whale, WNA Pygmy sperm whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA
Western Pacific Pelagic (Deep-set component) * ^	129	Blainville's beaked whale, HI Bottlenose dolphin, HI False killer whale, stock unknown Humpback whale, Central North Pacific Pantropical spotted dolphin, stock unknown Risso's dolphin, HI Short-finned pilot whale, HI Striped dolphin, HI
Category II		
DRIFT GILLNET FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
TRAWL FISHERIES:		
Atlantic Highly Migratory Species **	2	Undetermined
Pacific Highly Migratory Species **	3	Undetermined
CCAMLR	0	Antarctic fur seal
South Pacific Albacore Troll	2	Undetermined
Western Pacific Pelagic	4	Undetermined

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
Unspecified	4	Undetermined
PURSE SEINE FISHERIES:		
Pacific Highly Migratory Species * ^	8	None documented
South Pacific Tuna Fisheries	36	Undetermined
Western Pacific Pelagic	3	Undetermined
POT VESSEL FISHERIES:		
Pacific Highly Migratory Species **	7	Undetermined
South Pacific Albacore Troll	5	Undetermined
Western Pacific Pelagic	7	Undetermined
LONGLINE FISHERIES:		
CCAMLR	0	None documented
Pacific Highly Migratory Species * +	62	Risso's dolphin, CA/OR/WA
South Pacific Albacore Troll	11	Undetermined
South Pacific Tuna Fisheries **	3	Undetermined
Western Pacific Pelagic (Shallow-set component) * ^	28	Bottlenose dolphin, stock unknown Bryde's whale, stock unknown Humpback whale, Central North Pacific Risso's dolphin, stock unknown Sperm whale, stock unknown
HANDLINE/POLE AND LINE FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
Pacific Highly Migratory Species	22	Undetermined
South Pacific Albacore Troll	8	Undetermined
Western Pacific Pelagic	9	Undetermined
TROLL FISHERIES:		
Atlantic Highly Migratory Species	7	Undetermined
South Pacific Albacore Troll	53	Undetermined
South Pacific Tuna Fisheries **	3	Undetermined
Western Pacific Pelagic	44	Undetermined

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
LINERS NEI FISHERIES:		
Pacific Highly Migratory Species **	1	Undetermined
South Pacific Albacore Troll	1	Undetermined
Western Pacific Pelagic	1	Undetermined
FACTORY MOTHERSHIP FISHERIES:		
Western Pacific Pelagic	1	Undetermined
MULTIPURPOSE VESSELS NEI FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
Pacific Highly Migratory Species **	7	Undetermined
South Pacific Albacore Troll	4	Undetermined
Western Pacific Pelagic	5	Undetermined
Category III		
TROLL FISHERIES:		
Pacific Highly Migratory Species *	249	None documented

List of Terms, Abbreviations, and Symbols Used in Table 3:
GMX- Gulf of Mexico.
NEI - Not Elsewhere Identified.
Unspecified - Identifies the number of valid high seas permits for a fishery that, as of 2004, is no longer authorized under the HSFCA - High Seas Fishery Compliance Act. Once these permits expire (valid for 5 years), fishers will be required to obtain a permit for one of the seven currently authorized HSFCA fisheries to continue fishing on the high seas.
WNA - Western North Atlantic.
* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.
** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.
+ The marine mammal species or stock listed as killed or injured in this fishery has been observed taken by this fishery on the high seas.
^ The list of marine mammal species killed or injured in this fishery is identical to the list of marine mammal species killed or injured in U.S. waters component of the fishery, minus coastal stocks, because the marine mammal species are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the fisheries operating in U.S. waters.

Table 4 - Fisheries Affected by Take Reduction Teams and Plans

Take Reduction Plans	Affected Fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP) - 50 CFR 229.32	Category I Mid-Atlantic gillnet Northeast/Mid-Atlantic American lobster trap/pot Northeast sink gillnet Category II Atlantic blue crab trap/pot Atlantic mixed species trap/pot Northeast anchored float gillnet Northeast drift gillnet Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet*
Bottlenose Dolphin Take Reduction Plan (BDTRP) - 50 CFR 229.35	Category I Mid-Atlantic gillnet Category II Atlantic blue crab trap/pot Mid-Atlantic haul/beach seine NC inshore gillnet NC long haul seine NC roe mullet stop net Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet VA pound net
Harbor Porpoise Take Reduction Plan (HPTRP) - 50 CFR 229.33 (Gulf of Maine) and 229.34 (Mid-Atlantic)	Category I Mid-Atlantic gillnet Northeast sink gillnet
Pelagic Longline Take Reduction Plan (PLTRP) – 50 CFR 229.36	Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline
Pacific Offshore Cetacean Take Reduction Plan (POCTRP) - 50 CFR 229.31	Category I CA/OR thresher shark/swordfish drift gillnet (≥14 in mesh)
Take Reduction Teams	Affected Fisheries
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	Category II Mid-Atlantic Bottom Trawl Mid-Atlantic Mid-Water Trawl (Including Pair Trawl) Northeast Bottom Trawl Northeast Mid-Water Trawl (Including Pair Trawl)

* Only applicable to the portion of the fishery operating in U.S. waters.

For a description of each Take Reduction Team and copies of Take Reduction Plans, access: http://www.nmfs.noaa.gov/pr/interactions/trt/

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Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis leading to the certification is set forth below.

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA and obtain an Authorization Certificate. The Authorization Certificate authorizes the taking of marine mammals incidental to

commercial fishing operations. Additionally, fishers may be subject to a Take Reduction Plan (TRP) and requested to carry an observer. NMFS has estimated that approximately 44,600 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register with NMFS. The MMPA registration process is integrated with existing state and Federal licensing, permitting, and registration programs. Therefore, fishers who have a state and Federal fishery permit or landing license, or who are authorized through another related state and Federal fishery registration program, are currently not required to register separately under the MMPA or pay the $25 registration fee. Therefore, there are no direct costs to small entities under this final rule.

If a vessel is requested to carry an observer, fishers will not incur any direct economic costs associated with carrying that observer. Potential indirect costs to individual fishers required to take observers may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. For effective monitoring, however, observers will rotate among a limited number of vessels in a fishery at any given time and each vessel within an observed fishery has an equal probability of being requested to accommodate an observer. Therefore, the potential indirect costs to individual fishers are expected to be minimal because observer coverage would only be required for a small percentage of an individual's total annual fishing time. In addition, section 118 of the MMPA states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and was not prepared. In the event that reclassification of a fishery to Category I or II results in a TRP, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or mortalities has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a 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 OMB control number.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA in June 1995. NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This final rule would not make any significant change in the management of reclassified fisheries, and therefore, this final rule is not expected to change the analysis or conclusion of the 2005 EA. The Council of Environmental Quality (CEQ) recommends agencies review EAs every five years; therefore, NMFS reviewed the 2005 EA in 2009. NMFS concluded that, because there have been no changes to the process used to develop the LOF and implement section 118 of the MMPA (including no new alternatives and no additional or new impacts on the human environment), there is no need to update the 2005 EA at this time. If NMFS takes a management action, for example, through the development of a TRP, NMFS will first prepare an environmental document, as required under NEPA, specific to that action.

This final rule will not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this final rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under ESA section 7 for that action.

This final rule will have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This final rule will not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

References

Barlow, J., and S. Rankin. 2007. False killer whale abundance and density: preliminary estimates for PICEAS study area south of Hawaii and new estimates for the US EEZ around Hawaii. Administrative Report LJ–07–02. Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive La Jolla, CA 92037.

Forney, K. A., and D. R. Kobayashi. 2007. Updated Estimates of Mortality and Injury of Cetaceans in the Hawaii-based Longline Fishery, 1994–2005. U.S. Department of Commerce, NOAA Technical Memorandum NMFS, NOAA-TM-NMFS-SWFSC–412, 30 p.

NMFS. 2005. Revisions to Guidelines for Assessing Marine Mammal Stocks. 24 pp. Available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/gamms2005.pdf*

Dated: November 9, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 080226312–91249–03]

RIN 0648–AW12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 15B; Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 15B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule, for South Atlantic snapper-grouper, requires a private recreational vessel that fishes in the exclusive economic zone (EEZ), if selected by NMFS, to maintain and submit fishing records; requires a vessel that fishes in the EEZ, if selected by NMFS, to carry an observer and install an electronic logbook (ELB) and/or video monitoring equipment provided by NMFS; prohibits the sale of snapper-grouper harvested or possessed in the EEZ under the bag limits and prohibits the sale of snapper-grouper harvested or possessed under the bag limits by vessels with a Federal charter vessel/headboat permit for South Atlantic snapper-grouper regardless of where the snapper-grouper were harvested; requires an owner and operator of a vessel for which a commercial or charter vessel/headboat permit has been issued and that has on board any hook-and-line gear to comply with sea turtle and smalltooth sawfish release protocols, possess on board specific gear to ensure proper release of such species, and comply with guidelines for proper care and release of such species that are incidentally caught; and expands the allowable transfer of a commercial vessel permit under the limited access program and extends the allowable period for renewal of such a permit. Amendment 15B also revises the stock status determination criteria for golden tilefish and specifies commercial/recreational allocations for snowy grouper and red porgy. In addition, NMFS removes language specifying commercial quotas for snowy grouper and red porgy that are no longer in effect and revises sea turtle bycatch mitigation requirements applicable to the Gulf reef fish fishery to add two devices that were inadvertently omitted from a prior rule. The intended effects of this final rule are to provide additional information for, and otherwise improve the effective management of, the South Atlantic snapper-grouper fishery; minimize the impacts on incidentally caught threatened and endangered sea turtles and smalltooth sawfish; and remove outdated language.

DATES: This rule is effective December 16, 2009, except for the following amendments. The amendment to § 622.18(c) is effective November 16, 2009; the amendment to § 622.10(c) is effective February 16, 2010; and the amendments to §§ 622.5, 622.8, and 622.18(b)(1)(ii) require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). When OMB approval for those amendments is received, NMFS will publish a notice in the **Federal Register** announcing the applicable effective date.

ADDRESSES: Copies of the Final Environmental Impact Statement (FEIS), Final Regulatory Flexibility Analysis (FRFA), and Record of Decision may be obtained from Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Rich Malinowski, Southeast Regional Office, NMFS, and by e-mail to *David__Rostker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727–824–5305.

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

On June 4, 2009, NMFS published a notice of availability for Amendment 15B and requested public comments (74 FR 26827). On June 30, 2009, NMFS published the proposed rule to implement Amendment 15B and requested public comments (74 FR 31225). NMFS approved Amendment 15B on September 1, 2009. The rationale for the measures contained in Amendment 15B is provided in the amendment and the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received 216 comments on Amendment 15B and the proposed rule, including 1 comment from a state agency, 2 comments from Federal agencies, and 213 comments from individuals (including 155 copies of a form letter sent by individuals). Of these comments, 14 expressed general opposition to Amendment 15B, one comment expressed general support, and one comment was unrelated to the scope of the actions contained in the amendment and the rule. The remaining comments addressed specific concerns related to the actions contained in the amendment and the rule, and those comments, as well as NMFS' respective responses, are summarized below.

Comment 1: One hundred fifty seven comments expressed concern regarding the allocation of snowy grouper. Several constituents stated the 95–percent commercial and 5–percent recreational allocation of snowy grouper is unbalanced and favors the commercial sector. Others cited National Standard 4 (NS 4) of the Magnuson-Stevens Act, regarding ''fair and equitable'' management measures, as not being met, stating that a fair allocation of the species would be 50–percent commercial and 50–percent recreational. Another commenter stated recreational data collection is insufficient to monitor recreational landings and is concerned any recreational overages will undermine efforts to rebuild the stock.

Response: The sector allocations for snowy grouper in Amendment 15B are based on historical landings by fishery sector, and are proportional to the total allowable catch (TAC) for the applicable species. The Council recommended and NMFS adopted snowy grouper allocations based on average annual harvests for each sector using the longest time series of data (1986–2005). The snowy grouper 95–percent commercial and 5–percent recreational allocation was supported by the Council's Snapper-Grouper Advisory Panel. It was concluded that the preferred allocation is fair and equitable based on the best scientific information available.

NMFS recognizes that snowy grouper recreational landings are more difficult to track than commercial landings. Snowy grouper are infrequently encountered by the current data collection program, which is the Marine Recreational Fisheries Statistical

Survey. Therefore, the Council has discussed, as an action for a future amendment, the possibility of comparing a recreational annual catch limit with recreational landings averaged over a range of years. For example, for 2010, landings from 2010 would be used; for 2011, landings from 2010 and 2011 would be used; and for 2012, landings from 2010, 2011, and 2012 would be used.

Comment 2: One hundred fifty five commenters who signed the form letter opposed updating management reference points for golden tilefish. They stated that such updates should be delayed until a peer-reviewed study is completed with more current data.

Response: Section 303(a) of the Magnuson-Stevens Act requires that regional fishery management councils must specify within their FMPs objective and measurable criteria for identifying when the stocks are overfished or when overfishing is occurring. These criteria are referred to by NMFS as stock status determination criteria, otherwise known as management reference points. Required criteria include maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT). The Council has specified numerical values for MSY, OY, MSST, and MFMT (the definition of MFMT, which is the fishing mortality that will produce MSY, would remain unchanged) for golden tilefish, in Amendment 15B, based on the most recent Southeast Data, Assessment, and Review (SEDAR) assessment for golden tilefish, which was completed in 2004. The data used in the 2004 SEDAR assessment and in Amendment 15B were determined to be the best available scientific information by the Southeast Fisheries Science Center (SEFSC). The management reference points specified for golden tilefish in Amendment 15B will continuously be reviewed and updated as new data becomes available. The next SEDAR assessment for golden tilefish is scheduled to begin in 2010. If the assessment results indicate a change is needed, the management reference point values may be updated through a framework action or a future FMP amendment.

Comment 3: Three commenters supported the prohibition on bag limit sales of snapper-grouper, however, 168 commenters (including 155 commenters who signed the form letter) expressed opposition to the measure, for one or more reasons. Those opposed to this measure are concerned: about the potential cost of purchasing a commercial limited access snapper-grouper permit, which they would need to sell their snapper-grouper caught in Federal waters; they will no longer be able to sell their catch if they only hold state-issued commercial licenses; recreational fishermen could begin to sell their catch illegally, creating an illegal market for snapper-grouper; the prohibition unfairly favors the commercial sector and inequitably impacts the recreational and for-hire sectors; and for-hire and private recreational vessel operators will no longer be able to defray their trip costs by selling bag-limit caught snapper-grouper. Further, several commenters alleged that the prohibition on bag-limit sales contradicts Amendment 7 (1994) to the FMP, which implemented a provision to allow the sale of snapper-grouper caught under the bag limits by fishermen who possess a state-issued commercial license, and that the prohibition on bag-limit sales is illegal and violates Magnuson-Stevens Act National Standards (NS) 4, 5, and 8.

Response: The cost and limited availability of Federal commercial snapper-grouper permits (or limited-access snapper-grouper permits) could be determining factors for those fishermen seeking to sell their catch. If a person who does not hold a Federal commercial snapper-grouper permit wishes to sell snapper-grouper harvested from the EEZ, that person must purchase two Federal commercial snapper-grouper permits in order to be issued one Federal commercial snapper-grouper permit. This two-for-one program was established in 1998 through Amendment 8 to the FMP.

The prohibition on sale of bag-limit caught snapper-grouper is not intended to financially penalize recreational fishermen who would like to sell their catch, rather it is intended to:

(1) eliminate the double counting of recreationally caught fish, which may be counted through the Marine Recreational Fishing Statistics Survey and by snapper-grouper dealers who report all landings as commercial; (2) improve enforcement by implementing regulations compatible with those already in place for reef fish harvested in the Gulf of Mexico; and (3) reduce the financial risk and negative economic impacts that would be incurred if snapper-grouper fisheries are closed early due to recreationally caught fish being counted against the commercial quotas.

Fishermen who hold a state-issued commercial license to sell fish but who do not hold a Federal commercial snapper-grouper permit may be considered commercial fishermen by their respective state. However, those same fishermen are not considered participants of the Federal commercial sector of the snapper-grouper fishery. Fishermen holding state-issued commercial licenses will still be allowed to sell snapper-grouper, provided those fish are caught in state waters (and the fishermen do not also hold a Federal for-hire snapper-grouper permit), unless and/or until their state implements regulations compatible with this final rule.

Illegal sale of snapper-grouper by recreational fishermen will likely be an enforcement issue similar to other current illegal fish sales in the South Atlantic. The Council's Law Enforcement Advisory Panel reported that the prohibition of bag-limit sales would aid law enforcement efforts because the universe of people involved in the sale of snapper-grouper would be reduced.

The main argument shared by recreational fishermen on this issue is the disparity of negative socioeconomic impacts between the commercial and recreational sectors. However, fishermen with Federal commercial snapper-grouper permits are more dependent on snapper-grouper species to make a living than individuals who possess a state license and can sell up to their bag limit. Commercial harvesters with a Federal commercial snapper-grouper permit that depend on the harvest and sale of fish for their livelihood have greater vessel safety requirements and associated expenses than recreational fishermen have with their private vessels. This fact, coupled with recent regulations that have established or reduced quotas to end overfishing of a number of snapper-grouper species, were the primary reasons the Council voted to eliminate the sale of bag limit catch to prevent an early closure of the commercial sector of the snapper-grouper fishery and to prevent market disruption.

The revenue from sales of snapper-grouper caught under the bag-limits by those vessel owners who possess state-issued commercial licenses traditionally have been used to help offset the cost of fishing trips. Prohibiting the sale of bag-limit caught fish could result in a decrease in recreational fishing effort, and for-hire vessels may require increased fees or reduced levels of services offered. The use of bag-limit sales as a form of crew payment is understood to be common industry practice. Elimination of the bag-limit sale provision could result in the increase of charter fees, lower crew wages, or fewer crew onboard.

Amendment 7 to the FMP implemented controls on the sale and

purchase of snapper-grouper by limiting bag-limit sale transactions to those who possessed a state-issued commercial license to sell and dealers who held a Federal snapper-grouper dealer permit. It was NMFS' intent to allow the sale of bag-limit caught fish in order to improve stock assessments with the supplemental data and allow the Council to better manage the snapper-grouper resource. However, since the Council has established new (reduced) commercial quotas to end overfishing of several snapper-grouper species the consequences of bag-limit sales has become more evident. All snapper-grouper landings that are sold are counted toward commercial quotas and commercial fisheries close when their respective quotas are reached. NMFS is implementing the prohibition on bag-limit sales to help avoid early closures for species caught by the commercial snapper-grouper fleet. This action does not restrict the recreational fishermen from harvesting their bag limit; it restricts the sale of those bag limit harvested fish.

National Standard 4 states, in part, that conservation and management measures shall not discriminate between residents of different States, but if it becomes necessary to allocate such fishing privileges among various fishermen, such allocation shall be fair and equitable to all such fishermen. This rule ensures that fish harvested by the recreational sector are not counted toward the commercial quotas, that total landings are accurate, that market disruption is avoided due to early snapper-grouper fishery closures, and that South Atlantic regulations for sale of recreationally caught snapper-grouper are consistent with those for reef fish in the Gulf of Mexico. NS 5 states that conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose. NMFS acknowledges the economic impacts of this action. The economic analysis contained within Amendment 15B indicates that there would be adverse economic impacts to those who have engaged in bag limit sales. However, prohibiting the sale of bag-limit caught snapper-grouper will enhance efficiency in the utilization of fishery resources through improved data integrity by eliminating the double counting of snapper-grouper species towards both the recreational and commercial landings, which will result in improved assessments and management. Efficiency will also be gained through improved enforcement, as previously discussed, and because of the implementation of compatible regulations in the South Atlantic and Gulf of Mexico. In regard to NS 8, which states in part that conservation and management measures shall provide for the sustained participation of communities and minimize adverse impacts on such communities to the extent practicable, this action would help sustain fishing communities whose fishermen possess Federal commercial snapper-grouper permits and are directly dependent upon the harvest and sale of snapper-grouper species.

Comment 4: Many commenters supported the bycatch monitoring methods contained in Amendment 15B for commercial vessels, however, 178 commenters, including those that signed the form letter, opposed the requirement for private recreational vessels to carry observers and/or video monitoring systems if selected to do so by the Science and Research Director, SEFSC, NMFS (SRD), stating that it is a violation of their constitutional rights.

Response: It is not the Council's or NMFS' intent to infringe on any rights guaranteed to private citizens of the United States and these requirements do not violate any person's rights guaranteed under the United States Constitution. The requirement for private recreational vessels fishing for snapper-grouper in the EEZ to carry observers, and use video monitoring equipment, among other monitoring methods, if selected to do so by the SRD, is intended solely to supplement existing data on interactions with bycatch species and obtain information on regulatory discards. Additionally, any vessel fishing within the confines of Federal waters is subject to Federal requirements regardless of the commercial or recreational status of the vessel. The Council voted, and NMFS agreed to adopt, measures to collect standardized bycatch data across all sectors of the snapper-grouper fishery in order to create a more reliable and comprehensive database to be used in future fisheries management decisions.

Comment 5: One commenter stated that the monitoring methods included in Amendment 15B should be applied to all vessels operating in the snapper-grouper fishery, not only a selected portion.

Response: All fishing vessels operating in this fishery, if selected, are subject to these monitoring requirements, however, NMFS agrees that total bycatch monitoring coverage would yield the greatest amount of bycatch data. Placing observers, electronic logbooks, and video monitoring systems onboard all commercial and recreational vessels fishing for snapper-grouper in the South Atlantic EEZ would be cost prohibitive and is not statistically necessary to create a robust data set. Therefore, the Council decided to implement bycatch monitoring methods only on vessels selected by the SRD.

Comment 6: One hundred fifty five commenters who signed the form letter opposed the action that allows an individual to transfer his or her limited access vessel permit to a corporation whose shares are all held by the individual or the individual and one or more of his or her immediate family members. The majority of these commenters also support further permit reductions in the fishery in order to protect snapper-grouper stocks in the South Atlantic.

Response: This action would add no additional permits to the fishery. The intent of this action is to allow family-owned fishing businesses to transfer individual snapper-grouper permits to a family-owned corporation, on a one-for-one basis, to obtain tax and liability benefits that may be provided to a corporation. The snapper-grouper limited access program requires new entrants into the fishery to purchase two commercial snapper-grouper permits in exchange for one permit. Some current permit holders would like to incorporate their fishing businesses and transfer their snapper-grouper permits to a new family-owned corporation without the need to buy a second permit. The Council concluded that the modification to the permit transferability requirements is fair and equitable based upon the information available. Under this action, an individual would be able to transfer his or her limited access transferable vessel permit to a corporation whose shares are all held by the individual or the individual and or one or more of his or her immediate family members. The permit may not be renewed or transferred if an annual corporate report shows a shareholder other than an immediate family member of the individual who originally transferred the vessel permit to the family corporation.

While an optimal fleet size to maximize benefits (biological, social, and economic) for the snapper-grouper fishery doesn't currently exist, reductions in the number of permits in the limited access program continue under the current ''two-for-one'' permit program. The Council may choose to further reduce the number of permits in this fishery in a future amendment.

Comment 7: One commenter expressed concern about any

disproportionate effects the modification to permit transferability requirements might have on low-income or subsistence fishermen. The same commenter stated a more liberal approach may be appropriate for permit transferability requirements if, indeed, low-income or subsistence fishermen were affected.

Response: An environmental justice analysis was conducted for all actions in Amendment 15B (see Section 7.5 of the FEIS), and it found that no minority, low-income, or subsistence groups would be disproportionately affected by actions therein.

Comment 8: One commenter opposed the requirement for all vessels with commercial and for-hire snapper-grouper vessel permits, carrying hook-and-line gear onboard, to: (1) immediately release incidentally caught smalltooth sawfish by following the latest NMFS approved guidance on smalltooth sawfish release techniques; (2) have a copy of the document, provided by NMFS, titled ''Careful Release Protocols for Sea Turtle Release with Minimal Injury'' posted inside the wheelhouse, or within a waterproof case in a readily accessible area; (3) post the NMFS provided sea turtle handling and release guideline placard inside the wheelhouse, or in an easily viewable area if there is no wheelhouse; (4) tend to incidentally caught sea turtles in a manner consistent with the protocols specified in 50 CFR 635.21(c)(5)(ii); and (5) carry NMFS approved sea turtle release gear onboard.

Response: A 2006 Biological Opinion conducted by NMFS under the Endangered Species Act concluded that the impacts of the South Atlantic snapper-grouper fishery were likely to adversely affect threatened or endangered sea turtles and smalltooth sawfish. Based on the Biological Opinion, NMFS determined the need to implement sea turtle bycatch release equipment requirements, and sea turtle and smalltooth sawfish handling protocols and/or guidelines in the commercial and for-hire sectors of the snapper-grouper fishery. NMFS acknowledges the financial burden as well as the onboard storage issues related to requirements under this action. According to the economic impact analysis contained within the FEIS for Amendment 15B (Section 4.6.2), expenses per vessel are estimated to range from $617-$1,115.

Comment 9: One commenter asked if training in the proper use of sea turtle dehooking and disentanglement gear would be provided to fishermen in the snapper-grouper fishery, and how the success of requiring such gear would be monitored.

Response: Equipment specialists will conduct voluntary dockside training sessions for proper use of sea turtle release gear. Additionally, the protocol required onboard every Federally permitted snapper-grouper vessel contains step-by-step instructions on proper use of the required equipment and handling of entangled or hooked sea turtles. To monitor the efficacy of the requirement to carry sea turtle release gear, NMFS would need to implement an observer or video monitoring program in the snapper-grouper fishery. Presently, enforcement of this provision would occur via dockside and at-sea vessel inspections. Amendment 15B does include a requirement for federally permitted snapper-grouper vessels to carry an observer and/or video monitoring equipment on board if selected to do so by the SRD. Once funding is secured, NMFS' intention is to move forward with the implementation of an observer program for the snapper-grouper fishery of the South Atlantic.

Comment 10: One commenter stated the Snapper-Grouper Advisory Panel was unbalanced in its representation of commercial and recreational fishermen at the time the Advisory Panel voted against a motion to allow for the continued sale of bag limit caught snapper-grouper by fishermen holding state licenses to sell fish.

Response: Council advisory panels are made up of recreational and commercial fishermen, industry representatives, environmentalists and other interested members of the public who volunteer their time to advise the Council about trends in fisheries, environmental concerns relating to fish habitats and management impacts on fishermen and fishing communities. Advisory panel members serve 3-year terms and are appointed by the Council based on Committee recommendations. The advisory panel member's seat is open to qualified applicants at the end of the 3-year term, and the current member is also eligible for reappointment. Any motions or issues discussed by a specific advisory panel may be brought before the respective committee and Council for consideration. In this case, the issue of bag-limit sales was brought before, and voted on, by the Snapper-Grouper Committee as well as the Council. Both entities voted in favor of choosing the alternative to prohibit the sale of bag limit caught snapper-grouper in the South Atlantic as the preferred alternative. Subsequent to the Council's approval of Amendment 15B, the amendment was approved by the Secretary of Commerce.

Other Non-Substantive Changes Implemented by NMFS

This final rule removes the outdated 2008 quotas for snowy grouper and red porgy at § 622.42(e)(1) and (e)(6), respectively.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 15B is necessary for the conservation and management of the snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

An FRFA was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The purpose of this rule is to specify quotas for snowy grouper and red porgy; modify the sales provisions of snapper-grouper caught or possessed under the bag limit; implement a plan to monitor and assess bycatch; implement measures to minimize the impacts of incidental sea turtle and smalltooth sawfish take; and ease the requirements of snapper-grouper permit renewal and transfer. These measures are expected to provide additional information for, and otherwise improve the effective management of, the South Atlantic snapper-grouper fishery, and minimize the impacts on incidentally caught threatened and endangered sea turtles and smalltooth sawfish. The Magnuson-Stevens Act provides the statutory basis for this rule. In addition to these actions, Amendment 15B establishes allocation ratios for snowy grouper and red porgy, and management reference points and stock status criteria for golden tilefish.

No public comments were received that raised specific issues on the IRFA. However, comments were received from 13 individuals that addressed multiple issues relating to the general economic analysis conducted for the amendment and the proposed rule. Some of these comments address issues that are germane to the RFA, while others do not. However, while the Regulatory Flexibility Analysis (RFA) pertains to specific economic questions, there is a logical connection between all

economic issues and the nuances of which comments are or are not germane to the RFA may not be obvious to the public. In recognition of these considerations, all of the economic comments, regardless of whether they address issues relevant to the RFA, are addressed here.

Thirteen comments addressed the proposed prohibition on the sale of snapper-grouper harvested under the bag limit, and two comments addressed the potential costs of bycatch monitoring. Among the 13 comments on the sales prohibition, 8 expressed concern over the magnitude of the likely economic effects of the proposed rule; 2 comments stated that the cost of the necessary permit to allow continued bag-limit sales was prohibitive; 2 comments stated that markets would be harmed; 1 comment stated the rule will contribute to a regulatory-induced contraction of vessels in the fishery, resulting in a number of ''units'' that ''may approach a monopolistic level with perilous consequences≥; and 1 comment stated the economic analysis was inadequate because it did not sufficiently delineate the effects by user group, particularly the effects on individuals who possessed a North Carolina Standard Commercial Fishing License (SCFL). The two comments on bycatch monitoring stated that certain options, notably the use of observers and electronic monitoring, may be physically impractical or cost prohibitive.

NMFS agrees that this rule will result in adverse economic effects on fishermen who will no longer be able to continue to sell snapper-grouper harvested under the bag limit. Estimates of the average expected reduction in revenues associated with these harvests were provided in the analysis. Although some individual vessels will likely experience greater than average losses, across all affected entities, this rule is expected to reduce average annual fish sale revenues by approximately 17 percent for federally permitted for-hire vessels and approximately 7 percent for all other vessels. It is noted, however, that the primary revenue source for for-hire vessels is passenger fees and not fish sales, so the loss of these revenues should have a substantially lower impact on business profitability than the reduction in fish sales might imply. While vessels that will no longer be able to sell snapper-grouper harvested under the bag limit are expected to experience lower revenues, increased harvests and sales of snapper-grouper by vessels with the Federal commercial snapper-grouper permit will be possible, and the prohibition of the sale of fish harvested under the bag limit is necessary to achieve the Council's objectives.

NMFS agrees the cost of obtaining a Federal commercial snapper-grouper permit, resulting from the current limited access permit system that requires new entrants to purchase a Federal commercial snapper-grouper permit on the open market from a current permit holder, combined with the requirement that two current permits be purchased in order to enter the fishery, is prohibitive and, as a result, fishermen, who will no longer be able to sell bag-limit quantities of snapper-grouper are unlikely to acquire the necessary permits to continue commercial sales of these species. In the analysis of the proposed rule, the cost of a single Federal commercial snapper-grouper permit was estimated to range from $9,000-$21,000, but could be higher. As a result, affected vessels are expected to cease the sale of snapper-grouper and experience reductions in fish revenues ranging from, on average, 7 percent for commercial vessels and 17 percent for for-hire vessels, with some individual fishing vessels expected to experience greater than average reductions. While these vessels will be expected to be adversely affected, the Council has not determined at this time that it is appropriate to either eliminate the two-for-one permit requirement or allow increased participation in the commercial snapper-grouper fishery through other methods and, therefore, the elimination of snapper-grouper sales by vessels that do not have the Federal permit is necessary to achieve the Council's objectives.

NMFS disagrees that fish markets will be significantly affected by this rule. The prohibition on the sale of snapper-grouper harvested under the bag limit is only expected to affect those who may harvest and sell snapper-grouper and not the total amount of snapper-grouper harvested and sold. Thus, the total amount of snapper-grouper available to fish markets should not be substantially affected. Some individual market businesses, however, may experience declines in product flow, with others experiencing increases, because individual fishermen sell their harvests to different dealers. Markets that have historically purchased snapper-grouper harvested under the bag limit may have to develop new purchase strategies to maintain product flow, but total product availability across all markets is not expected to be reduced. Further, if the product mix of individual markets mirrors that of vessel sales, most markets should not be substantially dependent on sales of snapper-grouper harvested under the bag limit as snapper-grouper sales by fishermen that do not possess the Federal commercial snapper-grouper permit constituted less than eight percent of total sales of all species by these fishermen for 2004–2006.

NMFS disagrees that the rule will result in sufficient contraction of the fishery to raise monopoly concerns. Although the analysis for the proposed rule identified over 1,500 entities with recorded sales of snapper-grouper harvested under the bag limit for 2004–2006, over 700 entities have the necessary Federal commercial permit that will allow continued harvest and sale of these species. While the permit transfer provisions for this fishery are expected to result in further reduction over time of the number of vessels that operate in the fishery, the number of permitted vessels is sufficiently large that no monopoly concerns are evident.

NMFS disagrees that the economic analysis was inadequate because it did not sufficiently delineate the effects by user group. The economic analysis identified average historic harvest and sales activity by fishermen, by state, who did or did not possess the Federal commercial snapper-grouper permit. The expected economic effects of the proposed rule on affected entities equates to the loss of revenues from snapper-grouper sales by individuals who do not possess the Federal commercial snapper-grouper permit. In the case of North Carolina, fishermen who possessed either a SCFL or a Retired SCFL have been allowed to sell up to the recreational bag limit of snapper-grouper. The effects of the proposed rule on these entities was provided in the economic analysis, though the specific effects on North Carolina fishermen were pooled with those of South Carolina fishermen because of confidentiality. On average, the elimination of bag limit sales of snapper-grouper by these entities was estimated to affect approximately four percent of the total average annual sales of all marine species by these entities. Therefore, the results presented consisted of the expected economic effects on the subject group addressed in the comment. It is also noted, as discussed in the economic analysis in support of this rule, that state-licensed fishermen fishing in state waters who do not possess any Federal permit will be able to continue the harvest and sale of snapper-grouper harvested from state waters, and the expected economic effects described here will be reduced, if states do not adopt compatible regulations.

NMFS agrees that certain bycatch monitoring options may be physically

impractical, such as insufficient space on the vessel for an observer or no place to locate either an electronic logbook or video monitor, or cost prohibitive, particularly for some recreational vessels. However, any requirements would apply to a vessel only if selected, rather than all vessels, and NMFS expects these issues to be key considerations in the selection of vessels required to participate. Further, although subsequent operation and maintenance costs have been the responsibility of vessel owners where other electronic monitoring requirements, such as vessel monitoring systems, have been imposed, the initial purchase of the system may be government funded, further reducing the burden to the vessel. No decision on responsibility of these costs has been made at this time. However, NMFS expects that the selection of the method of data collection and the vessels affected will be appropriate to the type of vessel, considerate of the resultant burden, and will minimize any subsequent costs to the extent practicable.

As explained in the responses provided here and in the responses to other issues raised by public comment on other aspects of the proposed rule, as detailed in the Comments and Responses section of the preamble, no changes were made in this final rule as a result of such comments.

This final rule is expected to directly impact commercial fish harvesters and for-hire operators. The Small Business Association has established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the annual receipts threshold is $6.5 million (NAICS code 713990, recreational industries).

From 2001–2005, an average of 1,127 vessels per year were permitted to operate in the Federal commercial snapper-grouper fishery. However, over the 2004–2006 fishing years, an average of only 717 vessels per year that were permitted to operate in this fishery recorded snapper-grouper sales. The average annual dockside value of snapper-grouper sold by these vessels was approximately $12.96 million (nominal dollars), while the value of all other species sold by these vessels was approximately $14.33 million (nominal dollars), or total average annual revenues of approximately $27.29 million. The average annual dockside revenue per vessel from sales of all marine species for this period was approximately $38,000.

In 2005, 1,328 vessels were permitted to operate in the Federal snapper-grouper for-hire fishery, of which 82 are estimated to have operated as headboats, and 1,246 as charter vessels. Within these 1,328 vessels, 201 vessels also possessed a Federal commercial snapper-grouper permit and would be included in the summary information provided on the commercial sector. The charter vessels charge a fee on a vessel basis, and headboats charge a fee on an individual angler (head) basis. The charter vessel annual average gross revenue is estimated to range from approximately $62,000-$84,000 (2005 dollars) for Florida vessels, $73,000-$89,000 for North Carolina vessels, $68,000-$83,000 for Georgia vessels, and $32,000-$39,000 for South Carolina vessels. For headboats, the appropriate estimates are $170,000-$362,000 for Florida vessels, and $149,000-$317,000 for vessels in the other states. From 2004–2006, an average of 159 vessels per year with the for-hire snapper-grouper permit had recorded sales of snapper-grouper species. The total average annual revenues from snapper-grouper species were approximately $316,000 (nominal dollars), while average annual revenues for all other species was approximately $1.52 million (nominal dollars), for total average annual revenues from fish sales of approximately $1.84 million. The average annual revenue per for-hire vessel from fish sales of all marine species for this period was approximately $11,600. It should be noted that these revenues are not included in the average gross for-hire revenues listed above, which only reflect revenues from charter fees.

The prohibition of sale of fish harvested under the bag limit will affect vessels that have historically sold snapper-grouper but do not possess a Federal commercial snapper-grouper permit. From 2004–2006, an average of 1,439 fishing vessels per year that could not be associated with either a Federal commercial or Federal for-hire snapper-grouper permit had recorded snapper-grouper sales. Total average annual revenues from snapper-grouper species for these vessels were approximately $2.09 million (nominal dollars), while average revenues from all other species were approximately $28.59 million (nominal dollars), for total average annual revenues of approximately $30.67 million. The average annual revenue per vessel from sales of all marine species for this period was approximately $21,000.

Some fleet activity may exist in both the commercial and for-hire snapper-grouper sectors, but the extent of such is unknown, and all vessels are treated as independent entities in this analysis. Based on the average revenue figures described above, it is determined, for the purpose of this assessment, that all fishing operations that will be affected by this final rule are small entities.

This final rule will not explicitly impose any new reporting, record-keeping or other compliance requirements on small entities because this rule simply specifies the types of requirements that could be imposed to improve bycatch monitoring and assessment. An individual vessel would only be subject to new requirements if selected. However, the bycatch and monitoring assessment action could result in a requirement for the use of paper logbooks, electronic logbooks, video cameras, or the carrying of observers to aid in the monitoring of bycatch. All commercial snapper-grouper trips are currently required to complete logbook records, with each report estimated to take 10 minutes to complete. Over the years 2001–2005, commercial vessels operating in the snapper-grouper fishery took almost 16,000 trips, or approximately 14 trips per vessel. Assuming modification to the current logbook to include bycatch increased the time required to complete the form by 25 percent, the additional annual time burden to complete the form fishery-wide would be approximately 667 hours or 0.6 hours per vessel.

The headboat sector is also currently required to complete logbook reports for all trips, estimated to take 18 minutes per report. Assuming an average of 322 trips per vessel (note that many vessels take multiple trips per day, so the average number of trips does not equal days fished), 82 headboats, and a 25–percent increase in the amount of time required to complete the form to account for bycatch, the resultant increased annual time burden to the industry would be approximately 1,980 hours, or 24 hours per vessel.

Although charter vessels currently are required to complete logbooks if selected, no vessels in the charter-vessel sector are currently selected and required to submit logbooks. Assuming it took a charter vessel the same amount of time required for a commercial vessel to complete a bycatch-augmented logbook, 12.5 minutes, 1,246 charter vessels, and 146 trips per charter vessel

per year, if all vessels were required to complete logbooks, the total annual time burden to the industry would be approximately 37,900 hours or 30.4 hours per vessel.

There would be no anticipated costs of logbook reporting beyond the opportunity cost of completing the logbook forms. Current logbook programs provide fishermen with addressed, pre-paid envelopes for returning completed forms. Completing the logbooks would not be expected to require special skills.

Similar burden estimates are not available for the use of electronic logbooks. Electronic logbooks would be expected to take less time to complete because certain response variables could be preprogrammed and transmission would be simplified. Electronic logbooks are estimated to cost $500 per unit, but responsibility for this expense is undetermined at this time. Considering the widespread familiarity with and usage of computers throughout today's society, special skills to use an electronic logbook would not be expected, though some initial training or demonstration and a short learning curve would be logical.

The use of video cameras to monitor and record bycatch is likely a method that would, if used, be imposed on only a small portion of participants in the snapper-grouper fishery due to its cost and complexity. Purchase, installation, and maintenance costs of video systems would likely be borne by the government, though some cost-sharing with fishermen may occur. Additional details are unavailable at this time, so concrete determinations on fishermen burden or skill requirements cannot be made.

This final rule will directly affect all vessels that operate in the commercial snapper-grouper fishery, all vessels that have a Federal snapper-grouper charter vessel/headboat permit, and all vessels that harvest snapper-grouper from the EEZ and sell their catch to federally permitted dealers. All affected entities have been determined, for the purpose of this analysis, to be small entities. Because all entities that are expected to be affected by this final rule have been determined to be small entities, no disproportionate effects on small entities relative to large entities are expected.

Only four of the actions in this final rule, including: the two changes in quota, the prohibition on bag-limit sales, and the gear requirements to minimize the incidental take of sea turtles and smalltooth sawfish, are expected to have direct economic impacts on fishing entities. The snowy grouper quota of 82,900 lb (37,603 kg) gutted weight is expected to result in a loss of 1,100 lb (499 kg) of snowy grouper to the commercial sector. Assuming an average ex-vessel price of $2.31 per pound (2006 dollars), this reduction is valued at approximately $2,500, or a loss of approximately $13 per vessel active in the fishery (190 vessels; 2001–2005 average number of commercial vessels per year with snowy grouper landings). The red porgy quota of 190,050 lbs (86,205 kg) gutted weight is expected to result in a gain of 63,050 lb (28,599 kg) gutted weight of red porgy to the commercial sector. This gain is comprised of approximately 59,000 lbs (26,762 kg) gutted weight resulting from the increase in red porgy TAC as a result of the rebuilding strategy implemented through Amendment 15A to the FMP and the remaining increase resulting from an expected one percent increase due to the commercial allocation established by Amendment 15B. Assuming an average ex-vessel price of $1.40 per pound (2006 dollars), the total gain in commercial quota is valued at approximately $88,300, or a gain of approximately $493 per vessel active in the fishery (179 vessels; 2001–2005 average number of commercial vessels per year with red porgy landings).

Assuming the implementation of compatible regulations in all states, thus encompassing snapper-grouper harvested in both state and Federal waters as well as marketed through all state and federally permitted dealers, the prohibition on bag-limit sales is projected to result in the transfer of approximately $2.4 million in nominal ex-vessel revenues (2004–2006 average) from for-hire and commercial fishing vessels that do not have a Federal commercial snapper-grouper permit to the federally permitted commercial snapper-grouper sector. This will constitute a total reduction of approximately $316,000 per year from fish sales by vessels in the federally permitted for-hire fishery, or a 17–percent reduction in average annual gross revenues from fish sales per vessel, and approximately $2.085 million per year in sales from commercial vessels that do not posses a Federal commercial snapper-grouper permit, or a 7–percent reduction in average annual gross revenues per vessel. It should be noted that snapper-grouper fish sales by federally permitted for-hire vessels, estimated at approximately $2,000 per vessel on average, constitute a minor portion of total average annual revenues, with the majority of revenues coming from charter fees. As discussed above, South Atlantic charter vessels are estimated to have average gross annual revenues of approximately $32,000-$89,000, across all states, while headboat average annual revenues are estimated to range from $149,000-$362,000.

If compatible regulations are not adopted in any state, the estimated reduction in bag-limit sales revenues will be limited to those harvests that originate from the EEZ by all vessels, bag-limit harvests from state waters by vessels with the Federal charter vessel/headboat permit for South Atlantic snapper-grouper, and harvests that are marketed through dealers with a Federal permit. This will lower the reduction in bag-limit sales to approximately $1.562-$1.799 million, accounting for the estimated portion of bag-limit sales that originate in state waters (approximately 9 percent) and the estimated portion of bag-limit sales that are marketed through dealers without Federal licenses (approximately 21–35 percent). For the Federal for-hire sector, using the average EEZ bag-limit sales (approximately $267,000) and dealer proportions (approximately 11 percent state dealer sales if the North Carolina and South Carolina proportion is applied throughout and 34 percent otherwise), the reduction in bag limit sales will be approximately $175,000-$238,000. For the non-Federal sector, using the average EEZ bag-limit sales (approximately $1.921 million) and dealer proportions (approximately 23–percent state dealer sales if the North Carolina and South Carolina proportion is applied throughout and 35 percent otherwise), the reduction will be approximately $1.246 million to $1.483 million. These values equate to approximately a 10–13 percent reduction in average annual for-hire fish-sales revenues ($175,000-$238,000/159 vessels/$11,568 total average annual revenues) and approximately a 4–5 percent reduction in average annual revenues to non-federally permitted vessels ($1.246-$1.483 million/1,439 vessels/$21,317 total average revenues).

The transference of these revenues to the Federal commercial snapper-grouper sector will result in an estimated increase of approximately 9 percent in nominal ex-vessel revenues per year ($2.4 million/717 vessels/$38,000 average annual revenues) if compatible regulations are adopted by all states, and from 5 percent to 6 percent if no states adopt compatible regulations ($1.422-$1.729 million/717 vessels/$38,000 average annual revenues).

The gear requirements to minimize the incidental take impact on sea turtles and smalltooth sawfish are estimated to increase vessel gear costs by $617-

$1,115, based on low and high estimated costs, respectively, for each of the 12 different pieces of required gear and assuming the vessel does not already possess any of the required gear. Few actual vessels are expected to have to incur the maximum cost, however, because most vessels are expected to already possess and use most of this gear or allowable substitutes. For-hire vessels that exclusively harvest fish through snorkeling or diving activities and do not possess hook-and-line gear on-board will not have to carry the required gear. For those vessels that need to carry the gear, any costs will be one-time expenditures, subject to breakage or loss replacement.

Three alternatives, including the status quo, were considered for the action to address the sale of snapper-grouper harvested under the bag limit. This final rule will prohibit the purchase and sale of bag-limit fish harvested from or possessed in the EEZ by vessels that did not possess the Federal commercial snapper-grouper permit, and bag-limit fish harvested in either state or EEZ waters by vessels that possess the Federal charter vessel/headboat permit for South Atlantic snapper-grouper. The first alternative, the status quo, would continue to allow the sale of snapper-grouper harvested under the bag limit, continue to allow the Federal commercial snapper-grouper quota to be harvested and sold by vessels that did not possess the Federal commercial snapper-grouper permit, continue increased commercial quota pressure and accelerated quota closures, result in continued adverse economic effects on the Federal commercial snapper-grouper sector, and not achieve the Council's objectives.

The second alternative to the prohibition of sales of snapper-grouper harvested under the bag limit would allow continued sales by vessels with a Federal for-hire snapper-grouper permit. While this would reduce the adverse economic effects on the Federal commercial snapper-grouper sector associated with the status quo, these effects would not be eliminated, thereby generating less net economic benefits for this sector and associated businesses than this final rule.

Four alternatives, including the status quo, were considered for the action to establish a program to monitor and assess bycatch. This final rule will require the use of a variety of bycatch monitoring methods, which include observers and use of an ELB or video monitoring program, until the Atlantic Coastal Cooperative Statistics Program (ACCSP) bycatch monitoring program can be implemented. The first alternative to the bycatch monitoring program in this final rule, the status quo, would only utilize existing information, would not improve current capabilities to monitor and assess bycatch, and would not achieve the Council's objectives. The second alternative would require the implementation of the ACCSP bycatch monitoring program. The ACCSP is a cooperative state-federal program whose mission is to design, implement, and conduct marine fisheries statistics data collection programs and to integrate those data into a single data management system that will meet the needs of fishery managers, scientists, and fishermen. The ACCSP design includes data modules for catch and effort data, permit and vessel registration, biological data, bycatch data, quota monitoring data, economic data, and sociological data. These modules are being implemented on a priority basis consistent with available funding. At this time, funding is not available for implementation of the bycatch data module. While this program would generate the best data in the shortest period of time, with accompanying social and economic benefits, the program lacks the flexibility of allowing interim methods until such time as the preferred methods can be funded and adopted. As a result, this alternative would not meet the Council's objectives. The overall cost to implement the ACCSP bycatch monitoring program has not been identified.

The third alternative to the bycatch monitoring program in this final rule would implement a program that is less comprehensive than the program selected. This program would require a variety of reporting and monitoring tools, including observers, logbooks, and video monitoring, among other methods, but would be less structured and systematic than the ACCSP program or the program specified by this final rule. The cost of this program is unknown. As a result of being less structured and systematic, however, this program would be expected to be less costly than the program selected, but would also be expected to result in poorer data and generate fewer long-term benefits than the program in this final rule.

Three alternatives, including the status quo, were considered for the action to establish sea turtle and smalltooth sawfish take impact minimization measures. This final rule will require a number of impact minimization measures, including the carrying of release equipment. The first alternative to the final equipment requirements, the status quo, would not achieve the desired take-impact minimization and would not meet the Council's objectives.

The second alternative to the final equipment requirements would require the acquisition of less costly equipment (vessels with less than 4 ft (1.2 m) of freeboard would be required to carry less release gear and vessels with more than 4 ft (1.2 m) of freeboard would have more gear substitution options). However, these requirements would not be expected to result in the same reduction in bycatch impact minimization for these species and, as a result, would not be expected to result in as much protection for the species and net economic and social benefits for society.

Three alternatives, including the status quo, were considered for the action to establish the permit renewal period. This final rule will allow 1 year after permit expiration for permit renewal. The first alternative to the renewal period in this final rule, the status quo, would retain the current 60-day renewal requirement and would not achieve the Council's objective of increasing permit renewal flexibility.

The second alternative to the renewal period in this final rule would allow 6 months after permit expiration for permit renewal. While this would add greater flexibility for permit renewal relative to the status quo, thereby reducing the likelihood of unintended permit loss and associated economic losses, this alternative would not be consistent with the permit renewal period of most other permits and would not be as flexible as the renewal period in this final rule. Having common renewal periods makes it possible to renew all permits at the same time, decreases the burden associated with permit renewal, and decreases the possibility of unintended permit loss due to non-renewal.

Seven alternatives, including the status quo, were considered for the action to establish options for transfer provisions for permits owned by corporations comprised of family members. This final rule will allow the transfer of the permit to a corporation comprised solely of immediate family members. Five of the alternatives are variations of the transfer provisions of the final rule and vary by differences in required action if the requirement for the submission of the annual corporate report includes shareholders not listed on the original permit application. The first alternative to the transfer provisions of this final rule, the status quo, would continue to require a two-for-one permit exchange in order for a

permit holder to incorporate their business operation and change the ownership of the permit to the corporation. Current permit holders would be prevented from receiving the tax and other financial benefits of incorporation without incurring the added expense of purchasing a second snapper-grouper permit. Because this restriction was outside the scope of the Council's original intent for the two-for-one permit transfer requirement, maintaining the status quo would not achieve the Council's objectives.

The second alternative to the transfer provisions of this final rule would treat the addition of family members as corporate shareholders the same as non-family members. Thus, once a permit is transferred to a corporation, renewal of the permit would not be restricted by change in shareholders. This alternative would allow the most liberal transfer flexibility but would not preserve the Council's intent to promote family-owned fishing businesses.

The third alternative to the transfer provisions of this final rule would not allow a permit to be renewed and transferred if the annual corporate report showed a shareholder not listed on the original corporate documentation. This alternative would be the most restrictive of the sub-set of alternatives that allow family incorporation. Because this alternative would eliminate the flexibility to change corporate shareholders even among family members, this alternative would result in less economic benefits than this final rule.

The fourth alternative to the transfer provisions of this final rule would require a two-for-one transfer if the annual corporate report showed a shareholder not listed on the original corporate documentation. This requirement would increase the cost of transfer because of the cost of a second permit, estimated to cost between $9,000 and $21,000, and generate less net economic benefits than this final rule.

The fifth alternative to the transfer provisions of this final rule would require either a two-for-one transfer or a transfer back to person who is an immediate family member of the permit holder who originally transferred the permit to the family corporation if the annual corporate report showed a shareholder not listed on the original corporate documentation. This requirement would either increase the cost of transfer or eliminate the tax and financial benefits of incorporation and, thus, generate less net economic benefits than this final rule.

The sixth alternative to the transfer provisions of this final rule would eliminate the two-for-one permit transfer requirement. Permit holders would be able to transfer their permit to corporations, family owned or otherwise, and freely change shareholders without incurring the cost of obtaining an additional permit. While this would create the most flexible transfer conditions, it would eliminate the ability to reduce the size of the commercial snapper-grouper fleet through permit renewal requirements. While the optimal fleet size to maximize social and economic benefits to the nation has not been identified, the fishery is believed by the Council to still be overcapitalized and further contraction is necessary. Thus, this alternative would generate less net economic benefits than this final rule.

In addition to the actions discussed above, Amendment 15B considered alternatives to establish allocation ratios for snowy grouper and red porgy, and management reference points and stock status criteria for golden tilefish. These alternatives are discussed in the following paragraphs.

Four alternatives, including the status quo, were considered for the action to set the snowy grouper allocation, which was necessary to establish the commercial quota and recreational allocation. The final action will set the allocation to the recreational sector at 5 percent, resulting in a commercial allocation of 95 percent. The first alternative to the final allocation, the status quo, would not establish commercial and recreational allocations. Because allocations are necessary to quantify the commercial quota, this alternative would not achieve the Council's objective.

The second alternative to the final snowy grouper allocation would set the recreational allocation at 7 percent, while the third alternative would set the recreational allocation at 12 percent. Both alternatives would be expected to increase the economic benefits to the recreational sector while reducing the economic benefits to the commercial sector. Net economic benefits to the nation cannot be determined with available data. These alternatives were not selected as the final snowy grouper allocation because they were derived from shorter time periods than the final allocation, 1992–2005 and just 2005, respectively, compared to 1986–2005 for the final allocation, resulting in excessive influence of unrealistic spikes in recreational landings.

Four alternatives, including the status quo, were considered for the action to set the red porgy allocation. The final action will set both the commercial and recreational allocations equal at 50 percent. The status quo would not establish commercial and recreational allocations. Because allocations are necessary to quantify the commercial quota, this alternative would not achieve the Council's objective.

The second alternative to the final red porgy allocation would set the recreational sector allocation to 32 percent, while the third alternative would set the recreational allocation to 56 percent. Each sector would be expected to receive increased or decreased economic benefits relative to the status quo as their allocation increased or decreased. Net benefits to the nation under any alternative cannot be quantified with available data. Neither of these alternatives were selected as the final action because each would involve substantial changes from what the Council believes, based on advisory panel comment, is the most equitable allocation, which is the average sector harvest from 1999–2003, or 49 percent commercial and 51 percent recreational. The final action varies from this allocation by only one percentage point, allocating 50 percent of the TAC to each sector. While not precisely matching the average 1999–2003 harvest, the Council believes that this allocation equitably accounts for the increased value of red porgy to the recreational sector while reversing declines in commercial harvests due to previous regulatory action.

Two alternatives, including the status quo, were considered for the action to specify MSY for golden tilefish. The final MSY is approximately 336,000 lb (152,407 kg) whole weight. The alternative to the final MSY, the status quo, does not specify an MSY. Because specification of an MSY is a required component of an FMP, this alternative would not achieve the Council's objective.

Four alternatives, including the status quo, were considered for the action to specify OY for golden tilefish. The final OY is estimated to be approximately 327,000 lb (148,325 kg) whole weight. Similar to the status quo MSY, the status quo alternative for OY does not specify a value for OY. Because specification of an OY is a required component of an FMP, this alternative does not achieve the Council's objective. The second and third alternatives would establish OYs of approximately 315,000 lb (142,882 kg) whole weight and approximately 333,000 lb (151,046 kg) whole weight, respectively and are, respectively, more and less conservative than the final action. The second alternative to the final OY is believed to

be more conservative than necessary to protect the resource and would be expected to result in greater foregone economic benefits than the final OY. Conversely, the third alternative to the final OY is believed to be insufficiently conservative to protect the resource. The final OY is believed to be the appropriate choice to minimize foregone economic benefits while protecting the resource.

Three alternatives, including the status quo, were considered for the action to specify the MSST for golden tilefish. The final MSST will establish a value of approximately 1.454 million lb (0.660 million kg) whole weight. The first alternative to the final MSST, the status quo, would establish an MSST of approximately 1.784 million lb (0.809 million kg) whole weight, would require the largest minimum stock size, and would increase the likelihood that the resource be declared overfished, necessitating harvest reductions and imposing short term adverse economic impacts. The second alternative to the final MSST would require the smallest minimum stock size of approximately 969,000 lb (439,531 kg) whole weight. While this specification would minimize, among the three alternatives, the likelihood of the stock being declared overfished, this stock level is believed to be insufficiently conservative to provide adequate protection to the resource. The final MSST specifies a minimum stock size intermediate to the other alternatives and is believed to be the appropriate choice to minimize the likelihood of triggering restrictive management while protecting the resource.

Copies of the FRFA are available from NMFS (see **ADDRESSES**).

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare an FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders for the South Atlantic snapper-grouper fishery and the Gulf reef fish fishery.

Pursuant to 5 U.S.C. 533(d), there is good cause to waive the 30-day delay in effective date for one of the measures contained in this final rule which relieves a restriction, namely the extension of the time period to renew a limited access permit. Under current regulations, limited access permit holders have 60 days to renew their permits after the expiration date. This final rule extends the renewal period to 1 year. If the expiration date of a limited access permit were to fall within the 30-day delay in effective date of this rule, the permit holder would only have 60 days to renew their permit. However, waiving the 30-day delay in effective date for this measure, and implementing the 1-year renewal period immediately, reduces undue burden on the fleet and decreases the possibility of permit loss due to non-renewal.

This final rule contains collection-of-information requirements subject to the PRA. These requirements have been submitted to OMB for approval. NMFS will publish a notice in the **Federal Register** when these requirements have been approved by OMB and are effective (see **DATES**).

The public reporting burdens for these collections of information are estimated to average--(1) 10 minutes for each logbook submission, (2) 4 minutes for each notification of a vessel trip, (3) 20 minutes for each vessel and gear characterization form, (4) 31 minutes for each ELB installation and data download, (5) 8 hours for each video monitor installation and data download, and (6) 20 minutes for each change of ownership. These estimates of the public reporting burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding the burden estimates or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 9, 2009

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.2, the definition of ''Smalltooth sawfish'' is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Smalltooth sawfish means the species Pristis pectinata, or a part thereof.

* * * * *

■ 3. In § 622.5, paragraphs (a)(1)(iv), (b)(1), and (b)(2) are revised and paragraph (g) is added to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) * * *

(iv) *South Atlantic snapper-grouper*—

(A) *General reporting requirements.* The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(2)(vi), or whose vessel fishes for or lands South Atlantic snapper-grouper in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(B) *Electronic logbook/video monitoring reporting.* The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(2)(vi), who is selected to report by the SRD must participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD. Compliance with the reporting requirements of this paragraph (a)(1)(iv)(B) is required for permit renewal.

(C) *Wreckfish reporting.* The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must—

(*1*) Maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(*2*) Make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

* * * * *

(b) * * *

(1) *Coastal migratory pelagic fish, reef fish, snapper-grouper, and Atlantic dolphin and wahoo*—(i) *General reporting requirement*. The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, South Atlantic coastal migratory pelagic fish, Gulf reef fish, South Atlantic snapper-grouper, or Atlantic dolphin and wahoo has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, snapper-grouper, or Atlantic dolphin or wahoo in or from state waters adjoining the applicable Gulf, South Atlantic, or Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(ii) *Electronic logbook/video monitoring reporting*. The owner or operator of a vessel for which a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(1), who is selected to report by the SRD must participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD. Compliance with the reporting requirements of this paragraph (b)(1)(ii) is required for permit renewal.

(2) *Reporting deadlines*—(i) *Charter vessels*. Completed fishing records required by paragraph (b)(1)(i) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats*. Completed fishing records required by paragraph (b)(1)(i) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

* * * * *

(g) *Private recreational vessels in the South Atlantic snapper-grouper fishery*. The owner or operator of a vessel that fishes for or lands South Atlantic snapper-grouper in or from the South Atlantic EEZ who is selected to report by the SRD must—

(1) Maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD. Completed fishing records must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(2) Participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD.

■ 4. In § 622.7, paragraph (d) is revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(d) Falsify or fail to maintain, submit, or provide information or fail to comply with inspection requirements or restrictions, as specified in § 622.5.

* * * * *

■ 5. In § 622.8, paragraph (a)(6) is added to read as follows:

§ 622.8 At-sea observer coverage.

(a) * * *

(6) *South Atlantic snapper-grouper*. (i) A vessel for which a Federal commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a)(6)(i).

(ii) Any other vessel that fishes for South Atlantic snapper-grouper in the South Atlantic EEZ must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

* * * * *

■ 6. In § 622.10, paragraph (b)(1) is revised and paragraph (c) is added to read as follows:

§ 622.10 Conservation measures for protected resources.

* * * * *

(b) * * *

(1) *Sea turtle conservation measures*. (i) The owner or operator of a vessel for which a commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued, as required under §§ 622.4(a)(2)(v) and 622.4(a)(1)(i), respectively, must post inside the wheelhouse, or within a waterproof case if no wheelhouse, a copy of the document provided by NMFS titled, ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' and must post inside the wheelhouse, or in an easily viewable area if no wheelhouse, the sea turtle handling and release guidelines provided by NMFS.

(ii) Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, specified in §§ 635.21(c)(5)(i) and (ii) of this chapter, respectively.

(iii) Those permitted vessels with a freeboard height of 4 ft (1.2 m) or less must have on board a dipnet, tire, short-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in §§ 635.21(c)(5)(i)(E) through (L) of this chapter with the following modifications: the dipnet handle can be of variable length, only one NMFS-approved short-handled dehooker is required (i.e., § 635.21(c)(5)(i)(G) or (H) of this chapter); and life rings, seat cushions, life jackets, and life vests or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives to tires for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter. Those permitted vessels with a freeboard height of greater than 4 ft (1.2 m) must have on board a dipnet, tire, long-handled line clipper, a short-handled and a long-handled dehooker, a long-handled device to pull an inverted ''V'', long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in § 635.21(c)(5)(i)(A) through (L) of this chapter with the following modifications: only one NMFS-approved long-handled dehooker (§ 635.21(c)(5)(i)(B) or (C)) of this chapter and one NMFS-approved short-handled dehooker (§ 635.21(c)(5)(i)(G) or (H) of this chapter) are required; and life rings, seat cushions, life jackets, and life vests, or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter.

* * * * *

(c) *South Atlantic snapper-grouper commercial vessels and charter vessels/headboats*—(1) *Sea turtle conservation measures*. (i) The owner or operator of a vessel for which a commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-

grouper has been issued, as required under §§ 622.4(a)(2)(vi) and 622.4(a)(1)(i), respectively, and whose vessel has on board any hook-and-line gear, must post inside the wheelhouse, or within a waterproof case if no wheelhouse, a copy of the document provided by NMFS titled, ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' and must post inside the wheelhouse, or in an easily viewable area if no wheelhouse, the sea turtle handling and release guidelines provided by NMFS.

(ii) Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, specified in § 635.21(c)(5)(i) and (ii) of this chapter, respectively.

(iii) The required gear must meet the specifications described in § 635.21(c)(5)(i)(A) through (L) of this chapter with the following modifications: only one NMFS-approved long-handled dehooker (§ 635.21(c)(5)(i)(B) or (C) of this chapter) and one NMFS-approved short-handled dehooker (§ 635.21(c)(5)(i)(G) or (H) of this chapter) are required; and life rings, seat cushions, life jackets, life vests, or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives to tires for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter.

(2) *Smalltooth sawfish conservation measures*. The owner or operator of a vessel for which a commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under §§ 622.4(a)(2)(vi) and 622.4(a)(1)(i), respectively, that incidentally catches a smalltooth sawfish must—

(i) Keep the sawfish in the water at all times;

(ii) If it can be done safely, untangle the line if it is wrapped around the saw;

(iii) Cut the line as close to the hook as possible; and

(iv) Not handle the animal or attempt to remove any hooks on the saw, except with a long-handled dehooker.

§ 622.15 [Amended]

■ 7. In § 622.15, in paragraphs (c)(4)(iii) and (c)(5) remove cross references to ''§ 622.5(a)(1)(iv)(B)'' and add in its place the cross reference ''§ 622.5(a)(1)(iv)(C)(*1*)''.

■ 8. In § 622.18, paragraphs (b)(1)(ii) and (c) are revised to read as follows:

§ 622.18 South Atlantic snapper-grouper limited access.

* * * * *

(b) * * *

(1) * * *

(ii) A transferable permit may be transferred upon a change of ownership of a permitted vessel with such permit—

(A) From one to another of the following: husband, wife, son, daughter, brother, sister, mother, or father; or

(B) From an individual to a corporation whose shares are all held by the individual or by the individual and one or more of the following: husband, wife, son, daughter, brother, sister, mother, or father. The application for transfer of a permit under this paragraph (b)(1)(ii)(B) and each application for renewal of such permit must be accompanied by a current annual report of the corporation that specifies all shareholders of the corporation. A permit will not be renewed if the annual report shows a new shareholder other than a husband, wife, son, daughter, brother, sister, mother, or father.

* * * * *

(c) *Renewal*. NMFS will not reissue a commercial vessel permit for South Atlantic snapper-grouper if the permit is revoked or if the RA does not receive an application for renewal within one year of the permit's expiration date.

■ 9. In § 622.42, paragraphs (e)(1) and (e)(6) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(1) *Snowy grouper*. For the fishing year that commences January 1, 2009, and for subsequent fishing years—82,900 lb (37,603 kg).

* * * * *

(6) *Red porgy*. For the fishing year that commences January 1, 2009, and for subsequent fishing years- 190,050 lb (86,205 kg).

* * * * *

■ 10. In § 622.44, paragraph (c)(3) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(c) * * *

(3) *Snowy grouper*. (i) Until the quota specified in § 622.42(e)(1) is reached—100 lb (45 kg).

(ii) See § 622.43(a)(5) for the limitations regarding snowy grouper after the fishing year quota is reached.

* * * * *

■ 11. In § 622.45, paragraph (d) is revised to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) *South Atlantic snapper-grouper*. (1) A South Atlantic snapper-grouper harvested or possessed in the EEZ on board a vessel that does not have a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(vi), or a South Atlantic snapper-grouper harvested in the EEZ and possessed under the bag limits specified in § 622.39(d), may not be sold or purchased. In addition, a South Atlantic snapper-grouper harvested or possessed by a vessel that is operating as a charter vessel or headboat with a Federal charter vessel/headboat permit for South Atlantic snapper-grouper may not be sold or purchased regardless of where harvested, i.e., in state or Federal waters.

(2) A person may sell South Atlantic snapper-grouper harvested in the EEZ only to a dealer who has a valid permit for South Atlantic snapper-grouper, as required under § 622.4(a)(4).

(3) A person may purchase South Atlantic snapper-grouper harvested in the EEZ only from a vessel that has a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(vi).

(4) A warsaw grouper or speckled hind in or from the South Atlantic EEZ may not be sold or purchased.

(5) No person may sell or purchase a snowy grouper, gag, golden tilefish, greater amberjack, vermilion snapper, black sea bass, or red porgy harvested from or possessed in the South Atlantic, i.e., in state or Federal waters, by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued for the remainder of the fishing year after the applicable commercial quota for that species specified in § 622.42(e) has been reached. The prohibition on sale/purchase during these periods does not apply to such of the applicable species that were harvested, landed ashore, and sold prior to the applicable commercial quota being reached and were held in cold storage by a dealer or processor.

(6) During January, February, March, and April, no person may sell or purchase a red porgy harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., in state or Federal waters. The prohibition on sale/purchase during January through April does not apply to red porgy that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy harvested from an area

other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (d)(9) of this section.

(7) During April, no person may sell or purchase a greater amberjack harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., in state or Federal waters. The prohibition on sale/purchase during April does not apply to greater amberjack that were harvested, landed ashore, and sold prior to April 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of greater amberjack harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (d)(9) of this section.

(8) During January through April, no person may sell or purchase a gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, or coney harvested from or possessed in the South Atlantic EEZ or, if harvested or possessed by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., in state or Federal waters. The prohibition on sale/purchase during January through April does not apply to such species that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of such species harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (d)(9) of this section.

(9) The documentation supporting a dealer's purchase or sale of applicable species during the times specified in paragraphs (d)(6) through (d)(8) of this section must contain:

(i) The information specified in part 300, subpart K, of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the applicable species;

(iii) The port and date of offloading from the vessel harvesting the applicable species; and

(iv) A statement signed by the dealer attesting that the applicable species was harvested from an area other than the South Atlantic.

* * * * *

[FR Doc. E9–27442 Filed 11–13–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 219
Monday, November 16, 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 ENERGY

10 CFR Part 430

[Docket No. EERE–2008–BT–STD–0012]

RIN 1904–AB79

Energy Conservation Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers: Public Meeting and Availability of the Preliminary Technical Support Document

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of public meeting and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (DOE) will hold an informal public meeting to discuss and receive comments on the product classes that DOE plans to analyze for purposes of amending energy conservation standards for residential refrigeration products; the analytical framework, models, and tools that DOE is using to evaluate standards for these products; the results of preliminary analyses performed by DOE for these products; and potential energy conservation standard levels derived from these analyses that DOE could consider for these products. DOE also encourages written comments on these subjects. To inform stakeholders and facilitate this process, DOE has prepared an agenda, a preliminary Technical Support Document (TSD), and briefing materials, which are available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/refrigerators_freezers.html.*

DATES: The Department will hold a public meeting on December 10, 2009, from 9 a.m. to 5 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit such request, along with an electronic copy of the statement to be given at the public meeting, before 4 p.m., November 25, 2009. Written comments are welcome, especially following the public meeting, and should be submitted by no later than January 15, 2010.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, 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.

Interested persons may submit comments, identified by docket number EERE–2008–BT–STD–0012, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *E-mail: ResRefFreez-2008–STD–0012@hq.doe.gov.* Include EERE–2008–BT–STD–0012 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Public Meeting for Refrigerators, Refrigerator-Freezers, and Freezers, EERE–2008–BT–STD–0012, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. *Phone:* (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room. Please note that the Department's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) no longer houses rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Phone: (202) 287–1317. e-mail: *lucas.adin@ee.doe.gov* or Michael Kido, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Phone: (202) 586–9507. e-mail: *michael.kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

A. Statutory Authority

Part A of Title III of the Energy Policy and Conservation Act of 1975 (EPCA), 42 U.S.C. 6291 *et seq.,* established an energy conservation program for major household appliances, which includes residential refrigerators, refrigerator-freezers, and freezers.[1] This program authorizes the Department to establish energy efficiency standards for certain consumer products. Any new or amended standard for these products must (1) achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified, and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A)) To determine whether a proposed standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, weighing the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;

2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance

[1] Part A of Title III of EPCA, which focuses on consumer products, and the corresponding Part A–1, which governs certain commercial and industrial equipment, were originally titled Parts B and C, respectively. For editorial reasons, Parts B and C were redesignated as Parts A and A–1 in the United States Code.

expenses for the covered products which are likely to result from the imposition of the standard;

3. The total projected amount of energy savings likely to result directly from the imposition of the standard;

4. Any lessening of the utility or the performance of the covered products 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 conservation; and

7. Other factors the Secretary considers relevant.

(*See* 42 U.S.C. 6295(o)(2)(B)(i))

Prior to proposing a standard for public comment, DOE typically seeks public input on the analytical framework, models, and tools that DOE will use to evaluate standards for the product at issue; the results of preliminary analyses performed by DOE for the product; and potential energy conservation standard levels derived from these analyses that DOE could consider.

B. History of Standards Rulemaking for Refrigerators, Refrigerator-Freezers, and Freezers

1. Background

The National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12 (March 17, 1989), amended EPCA and established energy conservation standards for refrigerators, refrigerator-freezers, and freezers. See 42 U.S.C. 6295(b). It also required DOE to decide whether these standards should be amended and to conduct two rounds of rulemakings.

On November 17, 1989, DOE published a final rule in the **Federal Register** updating the performance standards. The new standards became effective on January 1, 1993. 54 FR 47916. Subsequently, DOE determined that new standards for some of the product classes were based on incomplete data and incorrect analysis, which prompted the publication of a correction notice. See 55 FR 42845 (Oct. 24, 1990). The notice amended the new standards for the following three product classes: (1) Refrigerators and refrigerator-freezers with manual defrost, (2) refrigerator-freezers with automatic defrost with a bottom-mounted freezer but without through-the-door (TTD) ice service, and (3) chest freezers and all other freezers. Id. In 1997, DOE updated the performance standards once again for refrigerators, refrigerator-freezers, and freezers by publishing a final rule in the **Federal Register** on April 28, 1997. 62 FR 23102. The new standards became effective on July 1, 2001. By completing a second standards rulemaking, DOE had fulfilled its legislative requirement to conduct two cycles of standards rulemakings.

A coalition including utility companies, consumer and low-income advocacy groups, environmental and energy efficiency organizations, and the California Energy Commission submitted a petition in 2004 requesting that DOE conduct another rulemaking to amend the standards for residential refrigerator-freezers. (June 1, 2004 Petition, Last accessed 9/9/09, *http://www.standardsasap.org/documents/rfdoe.pdf*) In April 2005, DOE granted the petition and conducted a limited set of analyses to assess the potential energy savings and potential economic benefit of new standards. (*See, e.g.,* ''Energy Department Grants Petition for New Refrigerator Energy Efficiency Standards'', ACEEE press release, April 13, 2005, Last accessed 9/9/09, *http://www.aceee.org/press/0504doepetition.htm*) DOE issued a report in October 2005 detailing the analyses, which examined the technological and economic feasibility of new standards set at Energy Star levels effective in 2005 for the two most popular product classes of refrigerators: top-mount refrigerator-freezers without TTD features and side-mount refrigerator-freezers with TTD features. Depending on assumptions regarding the impact that standards would have on market efficiency, DOE estimated that amended standards at the 2005 ENERGY STAR levels would yield energy savings of up to 2.4 to 3.4 quadrillion British thermal units (Btu), with an associated economic impact to the Nation ranging from a burden or cost of $1.2 billion to a benefit or savings of $3.3 billion. (*Technical Report: Analysis of Amended Energy Conservation Standards for Residential Refrigerator-Freezers,* U.S. Department of Energy, October 2005, Last accessed 9/9/09, *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/refrigerator_report_1.pdf*).

In October 2005, DOE published draft data sheets containing energy savings potentials for refrigerator-freezers as part of its fiscal year 2006 schedule-setting process. (*2006 Draft Rulemaking Activities Data* Sheets, Appliance Standards, Building Technologies Program, U.S. Department of Energy, October 2005, Last Accessed 9/9/09, *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/2006_activities_data_sheets.pdf*). The data sheets were based on the October 2005 draft technical report analyzing potential new amended energy conservation standards for residential refrigerator-freezers described above. The technical report and the associated data sheets provided input to the setting of priorities for rulemaking activities.

2. Current Rulemaking Process

The Energy Independence and Security Act of 2007 (EISA), Public Law 110–140 (Dec. 19, 2007), requires DOE to publish a final rule by December 31, 2010, to determine whether to amend the standards in effect for refrigerators, refrigerator-freezers, and freezers manufactured on or after January 1, 2014. See EISA, Sec. 311(a)(3) (codified at 42 U.S.C. 6295(b)(4)). As part of this rulemaking, if a positive determination is made, DOE must also include any amended standards. To comply with these new requirements, the Department published on its website the Energy Conservation Standards Rulemaking Framework Document for Residential Refrigerators, Refrigerator-Freezers, and Freezers (the framework document) to explain the issues, analyses, and process that it anticipated using for the development of energy efficiency standards for these products. This document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/refrigerator_freezer_framework.pdf* (Last accessed 9/9/09). DOE also published a notice announcing the availability of the framework document and a public meeting to discuss the proposed analytical framework, and inviting written comments concerning the development of standards for the residential refrigeration products. 73 FR 54089 (September 18, 2008).

DOE held a public meeting on September 29, 2008 to discuss the analyses and issues identified in various sections of the framework document. At the meeting, DOE described the different analyses it would conduct, the methods proposed for conducting them, and the relationships among the various analyses. Manufacturers, trade associations, environmental advocates, regulators, and other interested parties attended the meeting. Comments received since publication of the framework document helped identify issues for DOE to address in developing a proposed standard and provided information contributing to DOE's proposed resolution of these issues.

C. Summary of the Analyses Performed by DOE

For each of the residential refrigeration products currently under

consideration, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) energy-use characterization; (4) life-cycle cost (LCC) and payback period (PBP) analyses; and (5) national impact analysis (NIA). These analyses resulted in a preliminary TSD that presents the methodology and results of each of these analyses. The preliminary TSD is available at the Web address given in the **SUMMARY** section of this notice. The analyses are described in more detail below.

DOE also conducted several other supplemental analyses that will be expanded upon in the notice of proposed rulemaking (NOPR).[2] These analyses include the market and technology assessment, the screening analysis, which contributes to the engineering analysis, and the shipments analysis, which contributes to the NIA. In addition to these analyses, DOE has begun some preliminary work on the manufacturer impact analysis (MIA) and identified the methods to be used for the LCC subgroup analysis, the environmental assessment, the employment analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR.

1. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency of a product DOE is evaluating for amended energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. The engineering analysis identifies representative baseline products, which is the starting point for analyzing technologies that provide energy efficiency improvements. The term ''baseline product'' refers to a model or models having features and technologies typically found in products currently offered for sale. The baseline model in each product class represents the characteristics of products in that class and, for products already subject to energy conservation standards, is usually a model that just meets the current standard. After identifying the baseline models, DOE estimated manufacturer selling prices through an analysis of (1) manufacturer costs, and (2) markups, which are the multipliers used to determine the manufacturer selling prices based on manufacturing cost. Chapter 5 of the preliminary TSD discusses the engineering analysis.

2. Markups To Determine Product Prices

DOE derives consumer prices for products based on manufacturer, retailer, distributor, contractor, and builder markups, as well as sales taxes. Collectively, these items comprise the markups affecting product pricing. In deriving these markups, DOE has determined (1) the distribution channels for product sales; (2) the markup associated with each party in the distribution channels; and (3) the existence and magnitude of differences between markups for baseline products (baseline markups) and for more-efficient products (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the product markups at each step in the distribution channel. The overall incremental markup relates the change in the manufacturer sales price of higher-efficiency models (the incremental cost increase) to the change in the retailer or distributor sales price. Chapter 6 of the preliminary TSD discusses the estimation of markups.

3. Energy Use Characterization

The energy use characterization provides estimates of annual energy consumption for the residential refrigeration products, which DOE uses in the LCC and PBP analyses and the NIA. DOE developed energy consumption estimates for all of the product classes analyzed in the engineering analysis, as the basis for its energy use estimates. Chapter 7 of the preliminary TSD discusses the energy use characterization.

4. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total consumer expense for a product over the life of the product. The LCC analysis compares the LCCs of products designed to meet possible energy conservation standards with the LCCs of the products likely to be installed in the absence of standards. DOE determines LCCs by considering (1) total installed cost to the purchaser (which consists of manufacturer selling price, sales taxes, distribution chain markups, and installation cost); (2) the operating expenses of the products (energy use and maintenance); (3) product lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of more efficient products through savings in the operating cost of the product. It is the change in total installed cost due to increased efficiency divided by the change in annual operating cost from increased efficiency. Chapter 8 of the preliminary TSD discusses the LCC and PBP analyses.

5. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from new standards at specific efficiency levels. DOE calculated NES and NPV for each efficiency level as the difference between a base-case forecast (without new standards) and the standards case forecast (with standards). DOE determined national annual energy consumption by multiplying the number of units in use (by vintage) by the average unit energy consumption (also by vintage). Cumulative energy savings are the sum of the annual NES determined over a specified time period. The national NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, retirement rates (based on estimated product lifetimes), and estimates of changes in shipments and retirement rates in response to changes in product costs due to standards. Chapter 10 of the preliminary TSD discusses the NIA.

DOE consulted with stakeholders and other interested persons as part of its process for conducting all of the analyses and invites further input from the public on these topics. The preliminary analytical results are subject to revision following review and input from the public. The final rule will contain the final analysis results.

The Department encourages those who wish to participate in the public meeting to obtain the preliminary TSD and to be prepared to discuss its contents. A copy of the preliminary TSD is available at the Web address given in the **SUMMARY** section of this notice. However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD. The Department is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for these products or that DOE should address in the NOPR.

[2] Section 307 of the Energy Independence and Security Act of 2007, Public Law 110–140, amended section 325(p) of EPCA (42 U.S.C. 6295(p)) to remove a requirement that DOE publish an advance notice of proposed rulemaking. Thus, the first regulatory action in this proceeding will be publication of a notice of proposed rulemaking.

Furthermore, the Department welcomes all interested parties, whether or not they participate in the public meeting, to submit in writing by January 15, 2010, comments and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of standards for refrigerators, refrigerator-freezers, and freezers.

The public meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. Discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws is prohibited.

After the public meeting and the expiration of the period for submitting written statements, the Department will consider all timely comments and additional information that is obtained from interested parties or through further analyses, and it will prepare an NOPR. The NOPR will include proposed energy conservation standards for the products covered by this rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

Issued in Washington, DC, on November 9, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–27396 Filed 11–13–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 23

[Docket No. FAA–2009–0738; Notice No. 09–09]

RIN 2120–AJ22

Certification of Turbojets; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on August 17, 2009. In that document, the FAA proposed to amend applicable standards for part 23 turbojet-powered airplanes—which are commonly referred to as ''turbojets''—to reflect the current needs of industry, accommodate future trends, address emerging technologies, and provide for future airplane operations. This extension is a result of Cessna Aircraft Company's request to extend the comment period for the proposal.

DATES: The comment period for the NPRM published on August 17, 2009 (74 FR 41522) was scheduled to close on November 16, 2009, and is extended until December 16, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0738 using any of the following methods:

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

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pat Mullen, Regulations and Policy, ACE–111, Federal Aviation Administration, 901 Locust Street, Kansas City, MO 64106; telephone (816) 329–4111.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal at *http://www.regulations.gov*;

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within

the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Background

On August 17, 2009, the Federal Aviation Administration (FAA) published Notice No. 09–09, Certification of Turbojets (74 FR 41522). Comments to that document were to be received on or before November 16, 2009.

By letter dated October 29, 2009, Cessna Aircraft Company requested that the FAA extend the comment period for Notice No. 09–09 an additional 30 days. In their request, Cessna explains that the ''far reaching implications of the proposal create the need for more time to generate a reasonable and proper response.''

The FAA concurs with the petitioner's request for an extension of the comment period on Notice No. 09–09. This will also allow other commenters who may not have anticipated an extension of the comment period additional time to submit their comments. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petition made by Cessna Aircraft Company for extension of the comment period to Notice No. 09–09. The petitioner has shown a substantive interest in the proposed rule and good cause for the extension. The FAA has determined that extension of the comment period is consistent with the public interest and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 09–09 is extended until December 16, 2009.

Issued in Washington, DC, on November 10, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–27363 Filed 11–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1076; Directorate Identifier 2009–CE–019–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. Various Model MU–2B Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2006–17–01, AD 2006–15–07, AD 2000–02–25, and AD 97–25–02, which apply to certain Mitsubishi Heavy Industries, Ltd. (MHI) various Model MU–2B airplanes. An FAA-led MU–2B safety evaluation resulted in the standardization of the MU–2B specific training and the FAA-accepted pilot operating checklists through a special federal aviation regulation (SFAR). MHI revised the airplane flight manuals (AFMs) to align them with the information in that training and the checklists. In addition, incorporating all AFM revisions up to and including this latest AFM revision will incorporate all AFM compliance actions required by the four above-mentioned ADs. This proposed AD would retain from AD 2006–17–01 the inspection of the engine torque indication system and possible recalibration of the torque pressure transducers and would require incorporating all revisions up to and including the latest revisions of the AFM. We are proposing this AD to correct inconsistencies in critical operating procedures between the MU–2B specific training, the FAA-accepted pilot operating checklists, and the AFMs. This condition, if not corrected, could result in operators using FAA-accepted pilot operating checklists that differ from the AFM in certain critical operating procedures, which could result in failure to properly operate the airplane. This failure could lead to loss of control.

DATES: We must receive comments on this proposed AD by December 31, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *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 proposed AD, contact Mitsubishi Heavy Industries America, Inc., 4951 Airport Parkway, Suite 800; Addison, Texas 75001; telephone: (972) 934–5480; fax: (972) 934–5488; Internet: *http://www.mu-2aircraft.com* or *http://www.turbineair.com.*

FOR FURTHER INFORMATION CONTACT: Al Wilson, Flight Test Pilot, FAA, Fort Worth Airplane Certification Office (ACO), 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5146; fax: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2009–1076; Directorate Identifier 2009–CE–019–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 concerning this proposed AD.

Discussion

This proposed AD results from inconsistencies in critical operating procedures between the MU–2B specific training, the FAA-accepted pilot operating checklists, and the AFMs. In 2005, the FAA, Aircraft Certification and Flight Standards Service, conducted an MU–2B safety evaluation. The FAA found that MU–2B specific training was not required for all operators and, when provided, was not standardized. The safety evaluation also revealed that many FAA-accepted pilot operating checklists used by operators and

trainers had no regulatory basis and were locally produced, lacking standardization for normal, abnormal, and emergency flight operations.

In 2008, the FAA issued SFAR No. 108, Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Requirements. The SFAR requires standardization for critical operating procedures in training and in the FAA-accepted pilot operating checklists. MHI revised the AFMs to align them with the information in the current SFAR. The FAA requested Mitsubishi Heavy Industries, Ltd. make changes to the AFM for each model approved under Type Certificate Data Sheets (TCDS) A10SW and A2PC.

Incorporating all AFM revisions up to and including this latest AFM revision will incorporate the AFM actions in other ADs, as follows:

- AD 97–25–02, Amendment 39–10225 (62 FR 63830, December 3, 1997), requires revising the Limitations section of the airplane AFM to prohibit positioning the power levers below the flight idle stop while the airplane is in flight.
- AD 2000–02–25, Amendment 39–11543 (65 FR 5422, February 4, 2000), requires revising the AFM to include requirements for activating the airframe pneumatic deicing boots.
- AD 2006–15–07, Amendment 39–14687 (71 FR 41116, July 20, 2006), requires revising the Limitations section of the AFM to prevent improper rigging of the propeller feathering linkage.
- AD 2006–17–01, Amendment 39–14722 (71 FR 47697, August 18, 2006), requires inspecting the engine torque indication system, recalibrating the torque pressure transducers as required, and revising the Limitations section of the AFM to include power assurance charts. The one-time inspection of and possible recalibration is not part of the AFM revisions.

This condition, if not corrected, could result in operators using FAA-accepted pilot operating checklists that differ from the AFM in certain critical operating procedures, which could result in failure to properly operate the airplane. This failure could lead to loss of control.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 97–25–02, AD 2000–02–25, AD 2006–15–07, and AD 2006–17–01 with a new AD that would:

- Require incorporating all revisions up to and including the latest revisions of the AFM; and
- Retain from AD 2006–17–01 the requirement of the engine torque indication system inspection and possible recalibration.

Costs of Compliance

We estimate that this proposed AD would affect 355 airplanes.

We estimate the following costs to accomplish the proposed engine torque indication system inspection, including the recalibration and ground check if needed. This is a retained cost from AD 2006–17–01:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 work-hours × $80 = $400	Not applicable	$400	$142,000

We estimate the following costs to do the proposed AFM revisions:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	Not applicable	$80	$28,400

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5527) is located at the street address stated 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 97–25–02, Amendment 39–10225 (62 FR 63830, December 3, 1997); AD 2000–02–25, Amendment 39–11543 (65 FR 5422, February 4, 2000); AD 2006–15–07, Amendment 39–14687 (71 FR 41116, July 20, 2006); and AD 2006–17–01, Amendment 39–14722 (71 FR 47697, August 18, 2006), and adding the following new AD:

Mitsubishi Heavy Industries, Ltd.: Docket No. FAA–2009–1076; Directorate Identifier 2009–CE–019–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by December 31, 2009.

Affected ADs

(b) This AD supersedes AD 97–25–02, Amendment 39–10225; AD 2000–02–25, Amendment 39–11543; AD 2006–15–07, Amendment 39–14687; and AD 2006–17–01, Amendment 39–14722.

Applicability

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

(1) Mitsubishi airplanes listed in Type Certificate Data Sheet (TCDS) A10SW:

Models	Serial Nos.
MU–2B–25, MU–2B–26, MU–2B–26A, MU–2B–35, MU–2B–36, MU–2B–36A, MU–2B–40, MU–2B–60	All serial numbers.

(2) Mitsubishi airplanes listed in TCDS A2PC:

Models	Serial Nos.
MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–30, MU–2B–35, MU–2B–36	All serial numbers.

Unsafe Condition

(d) This AD results from inconsistencies in critical operating procedures between the MU–2B specific training, the FAA-accepted pilot operating checklists, and the airplane flight manuals (AFM). MHI revised the airplane flight manuals (AFMs) to align them with the information in that training and the checklists. We are proposing this AD to correct the inconsistencies described above. This condition, if not corrected, could result in operators using FAA-accepted pilot operating checklists that differ from the AFM in certain critical operating procedures, which could result in failure to properly operate the airplane. This failure could lead to loss of control.

Compliance

(e) Do the following unless already done:

(1) Within 100 hours time-in-service (TIS) after September 22, 2006 (the effective date retained from AD 2006–17–01), inspect the engine torque indication system and, before further flight after the inspection, recalibrate the torque pressure transducers as required. For airplanes listed in TCDS A2PC, follow Mitsubishi Heavy Industries, Ltd. (MHI) MU–2 Service Bulletin No. 233A, dated January 14, 1999. For airplanes listed in TCDS A10SW, follow MHI MU–2 Service Bulletin No. 095/77–002, dated July 15, 1998. This inspection requires the use of the power assurance charts referenced in Table 1 below:

TABLE 1—POWER ASSURANCE CHART FROM AD 2006–17–01

Airplane model affected	Date and version of AFM	Page number from AFM
MU–2B	AFM, Section 6, Revision 9, dated January 14, 1999	6–34.
MU–2B–10	AFM, Section 6, Revision 9, dated January 14, 1999	6–19.
MU–2B–15	AFM, Section 6, Revision 9, dated January 14, 1999	6–19.
MU–2B–20	AFM, Section 6, Revision 9, dated January 14, 1999	6–20.
MU–2B–25	AFM, Section 6, Reissued March 25, 1986; and	6–18 and 6–19.
	AFM, Section 6, Revision 9, dated January 14, 1999	6–19.
MU–2B–26	AFM, Section 6, Reissued March 25, 1986; and	6–17 and 6–18.
	AFM, Section 6, Revision 9, dated January 14, 1999	6–19.
MU–2B–26A	AFM, Section 6, Reissued March 25, 1986	6–17 and 6–18.
MU–2B–30	AFM, Section 6, Revision 10, dated January 14, 1999	6–19.
MU–2B–35	AFM, Section 6, Reissued March 25, 1986; and	6–18 and 6–19.
	AFM, Section 6, Revision 9, dated January 14, 1999	6–19.
MU–2B–36	AFM, Section 6, Revision 9, dated January 14, 1999	6–20.
MU–2B–36A	AFM, Section 6, Reissued February 28, 1986	6–20 and 6–21.
MU–2B–40	AFM, Section 6, Reissued March 25, 1986	6–17 and 6–18.
MU–2B–60	AFM, Section 6, Reissued September 24, 1985	6–19 and 6–20.

(2) Within the next 50 hours TIS after the effective date of this AD or within the next 6 months after the effective date of this AD, whichever occurs first, incorporate all revisions up to and including the latest revisions as published in the list of effective pages of the applicable AFM listed in Table 2 and Table 3. Assure that the applicable AFM contains each page, matching all the page numbers and page dates, listed in the Effective Pages listing for that AFM:

TABLE 2—TCDS A10SW

Airplane model	AFM name	Effective pages list
MU–2B–25	MU–2B–25 Airplane Flight Manual K Model, Document Number MR–0156–1.	all revised pages up to and including revision 11, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–26	MU–2B–26 Airplane Flight Manual M Model, Document Number MR–0160–1.	all revised pages up to and including revision 11, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–26A	MU–2B–26A Airplane Flight Manual P Model, Document Number MR–0194–1.	all revised pages up to and including revision 13, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–35	Not Available	Contact the type certificate holder for the latest revision of the FAA-approved AFM.
MU–2B–36	Not Available	Contact the type certificate holder for the latest revision of the FAA-approved AFM.
MU–2B–36A	MU–2B–36A Airplane Flight Manual N Model, Document Number MR–0196–1.	all revised pages up to and including revision 15, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–40	MU–2B–40 Airplane Flight Manual SOLITAIRE Model, Document Number MR–0271–1.	all revised pages up to and including revision 13, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–60	MU–2B–60 Airplane Flight Manual MARQUISE Model, Document Number MR–0273–1.	all revised pages up to and including revision 15, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.

Note: The AFM revisions are not available for Models MU–2B–35 and MU–2B–36 under TCDS A10SW because the only Model MU–2B–35 airplane was destroyed and subsequently removed from the registry. The only Model MU–2B–36 airplane manufactured was converted to a Model MU–2B–36A. Mitsubishi Heavy Industries, Ltd. has indicated they have no intention of putting either model back in production. There are no other serial numbers eligible for either model, foreign or domestic. These models are still eligible under the type certificate, so if Mitsubishi Heavy Industries, Ltd. does put either model back in production, contact them for an FAA-approved AFM.

TABLE 3—TCDS A2PC

Airplane model	AFM name	Effective pages list
MU–2B	MU–2B Airplane Flight Manual, YET 67026A	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–10	MU–2B–10 Airplane Flight Manual, YET 86400	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–15	MU–2B–15 Airplane Flight Manual, YET 68038A	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–20	MU–2B–20 Airplane Flight Manual, YET 68034A	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–25	MU–2B–25 Airplane Flight Manual, YET 71367A	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–26	MU–2B–26 Airplane Flight Manual, YET 74129A	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–30	MU–2B–30 Airplane Flight Manual, YET 69013A	all revised pages up to and including revision 14, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–35	MU–2B–35 Airplane Flight Manual, YET 70186A	all revised pages up to and including revision 14, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–36	MU–2B–36 Airplane Flight Manual, YET 74122A	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, FAA, Fort Worth Airplane Certification Office (ACO), has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Al Wilson, Flight Test Pilot, FAA, Fort Worth ACO, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5146; fax: (817) 222–5960. 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.

Related Information

(g) To get copies of the AFM revisions referenced in this AD, contact Mitsubishi Heavy Industries America, Inc., 4951 Airport Parkway, Suite 800, Addison, Texas 75001; telephone: (972) 934–5480; fax: (972) 934–5488; Internet: *http://www.mu-2aircraft.com* or *http://www.turbineair.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.*

Issued in Kansas City, Missouri, on November 9, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–27389 Filed 11–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 090122044–91248–01]

RIN 0648–AX58

Marine Sanitation Device Discharge Regulations for the Florida Keys National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; request for public comments.

SUMMARY: NOAA proposes to amend the regulations implementing the Florida Keys National Marine Sanctuary (FKNMS or sanctuary) to eliminate the exemption that allows discharges of biodegradable effluent incidental to vessel use and generated by marine sanitation devices, and to require marine sanitation devices be locked to prevent discharges. This action builds upon the Environmental Protection Agency's creation of a no discharge zone for the state waters of the FKNMS. This action will help protect the Florida Keys ecosystem from potentially harmful vessel sewage discharges and will eliminate at least one contributing factor to declining water quality within the FKNMS. Improved water quality is necessary for the maintenance and enhancement of the sanctuary's biological resources, as well as of the recreational opportunities they provide. A draft environmental assessment has been prepared for this proposed action pursuant to the National Environmental Policy Act.

DATES: Comments on the proposed rule and the draft environmental assessment will be accepted if received on or before February 17, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Submit electronic comments via the Federal eRulemaking Portal, FDMS Docket Number NOAA–NOS–2009–0181;
- *Mail:* Sean Morton, Acting Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, Florida 33040.
- *Instructions:* All comments received are a part of the public record and will be generally posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Comments will be posted at the end of the public comment period.

The draft environmental assessment is available for download at *http://floridakeys.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Sean Morton, Acting Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, Florida 33040.

SUPPLEMENTARY INFORMATION:

Electronic Access:

This **Federal Register** document is also accessible via the Internet at [INSERT GPO ACCESS URL].

Statutory and Regulatory History of the FKNMS

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. Management of national marine sanctuaries has been delegated by the Secretary of Commerce to NOAA's Office of National Marine Sanctuaries. The primary objective of the NMSA is to protect marine resources, such as coral reefs, sunken historical vessels or unique habitats.

The FKNMS was designated by Congress in 1990 through the Florida Keys National Marine Sanctuary Protection Act (FKNMSPA, Pub. L. 101–605) and extends approximately 220 nautical miles southwest from the southern tip of the Florida peninsula, and is composed of both state and Federal waters. The sanctuary's marine ecosystem supports over 6,000 species of plants, fishes, and invertebrates, including the Nation's only living coral reef that lies adjacent to the continent. The area includes one of the largest seagrass communities in this hemisphere. The primary goal of the sanctuary is to protect the marine resources of the Florida Keys.

Other goals of the sanctuary include facilitating human uses that are consistent with the primary objective of resource protection as well as educating the public about the Florida Keys marine environment. Attracted by this subtropical diversity, tourists spend more than thirteen million visitor days in the Florida Keys each year. In addition, the region's natural and man-made resources provide recreation and livelihoods for approximately 80,000 residents. The region also has some of the most significant maritime heritage and historical resources of any coastal community in the nation.

NOAA issued final regulations and a final management plan in 1997 for the FKNMS (62 FR 32161; June 12, 1997). Those regulations were designed to protect the fragile and nationally significant marine resources of the Florida Keys ecosystem. In doing so, these regulations established a series of fully protected marine zones, managed certain human activities, and established a permitting system for allowing some activities that would otherwise be prohibited. Sanctuary-wide prohibitions include restrictions on discharges into the sanctuary, disturbing the seafloor of the sanctuary, and taking certain marine species.

Currently, NOAA prohibits vessels from discharging or depositing materials or other matter in the sanctuary (15 CFR 922.163(a)(4)). Exceptions to this prohibition include discharging or depositing: (1) Fish, fish parts, and bait during traditional fishing operations; (2) cooling water or engine exhaust; (3) water generated by routine vessel operations (e.g., deck wash and graywater), excluding oily wastes from bilge pumping; and (4) biodegradable effluent from marine sanitation devices. However, in certain protected zones within the sanctuary, including

Ecological Reserves, Sanctuary Preservation Areas, and Research-only Areas, only discharges of engine exhaust and cooling water are allowed.

In addition to NOAA, the U.S. Environmental Protection Agency (EPA), National Park Service, U.S. Coast Guard, the State of Florida, and local municipalities (e.g., City of Key West, Marathon) also have regulations governing MSDs and vessel discharges within the Florida Keys region.

Proposed Rule Background

Water quality in the Florida Keys has been a long-standing concern. Under section 163.3177 of the Florida Statutes, all counties and municipalities throughout the State of Florida are required to develop and adopt a comprehensive plan that address principles, guidelines, and standards for balancing future economic, social, physical, environmental, and fiscal development of the area. In addition, local governments can use local comprehensive plans to conserve, develop, utilize, and protect natural resources within their jurisdictions (Fla. Stat. § 163.3161(3)). The FKNMS resides in the jurisdiction of Monroe County. Monroe County developed the Monroe County Comprehensive Plan, which includes several objectives geared toward improving and protecting water quality from vessel discharges.

In 1999, the Board of County Commissioners of Monroe County adopted a resolution requesting that the Governor of the State of Florida petition the EPA to declare all waters of the State within the boundaries of the FKNMS to be a NDZ. A NDZ is an area of a waterbody or an entire waterbody into which the discharge of sewage (whether treated or untreated) from all vessels is completely prohibited. NDZs are designed to give states an additional tool to address water quality issues associated with sewage contamination. Monroe County believed that this action would be a major step in protecting water quality around the Keys and especially those areas where there is a high concentration of vessels. The Governor of the State of Florida supported Monroe County's decision and in December 2000 submitted the county's request to EPA Region 4, asking EPA to designate all state waters within the boundary of the FKNMS as a NDZ under the authority of section 312 of the Clean Water Act (33 U.S.C. 1322 *et seq.*).

Section 312 of the CWA gives the EPA and states the authority to designate NDZs in state waters. Pursuant to the authority provided in § 312(f)(4)(a) the CWA, in 2002, the EPA issued a final rule that designated the state waters of the FKNMS a NDZ (67 FR 35735; May 21, 2002). Effective June 19, 2002, the EPA's final rule prohibited all sewage discharges from vessels in state waters of the FKNMS. Although the EPA's rule under the CWA was limited to only state waters of the FKNMS, EPA recognized NOAA's intention to expand the prohibition on sewage discharges from vessels into the federal waters of the sanctuary.

In December 2007, NOAA issued a revised management plan for the FKNMS that was the culmination of an extensive public process. The management plan included a water quality action plan and regulatory action plan. The strategies in the water quality action plan address sources of pollution, priority corrective actions and compliance schedule, and seek to maintain and improve a balanced, indigenous population of corals, shellfish, fish and wildlife, and recreation in and on the water. In particular, water quality Strategy L.1 identified the need to eliminate the discharge of wastewater, whether treated or not, from all vessels into sanctuary waters. The regulatory action plan identified the designation of a sanctuary-wide no discharge zone as a management priority.

Summary of the Proposed Rulemaking

This rulemaking proposes to eliminate the exemption that allows discharges of biodegradable effluent incidental to vessel use and generated by MSDs and to add a new requirement that MSDs be locked to prevent discharges while in the FKNMS.

A major challenge to scientists and managers working in the Florida Keys and elsewhere is being able to differentiate the natural variability of ecosystems from human-caused disturbances. Signs of ecosystem stress in the Florida Keys include loss of coral cover and diversity, particularly at offshore bank reefs, increasing nitrogen and phosphorus concentrations in the near shore waters, decreased water clarity, and changes in the natural benthic community composition. Comprehensive monitoring of coral reef resources was initiated in 1996 because of the observed but poorly quantified loss of coral cover throughout the Florida Keys, and has documented a 37% reduction in stony coral coverage between 1996 and 2000. Habitat and water quality degradation in canals and other semi-confined waters within the Florida Keys has been measured and is related to human population density.

There are many variables to consider in assessing the impacts of discharges from vessels transiting Keys waters including the volume of discharge, level of treatment, number of vessels, depth and distance from shore or other sources of pollution, current patterns, and habitat type at the discharge point. For example, the dilution of wastewater from a single vessel transiting the Keys may be great, but the discharge may not cause serious ecological problems and may not be detectable within a short distance from the point of discharge. However, the cumulative impact of discharges from many transiting vessels could significantly and negatively impact the sanctuary.

In response to an increasing boating population, and the resulting higher discharge potential in south Florida, NOAA proposes to prohibit discharges of biodegradable effluent incidental to vessel use and generated by MSDs from all vessels while in the sanctuary. Recent data show a continued upward trend in the number of registered boaters in southern Florida, which would suggest an increased potential of transient visits to the Florida Keys and discharge in the FKNMS. The potential impacts are increased if the transiting vessels discharge in close proximity to coral reef or seagrass habitats. In consideration of the ever increasing boating population (discharge potential) in south Florida, the status quo is not compatible with long-term marine ecosystem protection strategies. NOAA considered an alternative that would allow vessels to discharge at various locations within the FKNMS, however this alternative was rejected as it may lead to confusion among boaters and enforcement problems. Thus, the prudent and expedient course of action is to eliminate all discharges of wastewater from all vessels in the FKNMS.

If this rule is implemented, vessels would have to use a pump out station or discharge biodegradable effluent beyond the boundaries of the sanctuary. Florida boaters are already familiar with using pump out stations. Since discharges are prohibited in the EPA NDZ for the state waters of the FKNMS, many boaters already utilize the 38 pump out stations in the Florida Keys. In addition, access to pump out facilities is expected to increase due to additional funding under the Clean Water Act.

NOAA is proposing to require that all vessels secure MSDs while in the boundaries of the FKNMS. This requirement would achieve the goal of helping to protect the Florida Keys ecosystem by prohibiting the discharge of potentially harmful vessel sewage because it would enhance the

enforceability of the prohibition. Without this requirement, enforcement personnel would have to witness the discharge of biodegradable effluent. The probability that personnel would be present at the exact moment of discharge is beyond reasonable expectations. In addition, although NDZ designation by EPA does not specifically require that MSDs be in a locked position, the final rule designating the state waters of the FKNMS as a NDZ does state that MSDs should be secured to prohibit discharge while navigating within the NDZ. Specifically, ''The NDZ designation would not cause existing Type 1 and 2 MSDs to be in violation by their mere presence onboard the vessel. However, it would be illegal for vessel operators to discharge from these devices while inside the NDZ. Type 1 and 2 MSDs should be secured to prohibit discharge while navigating or otherwise situated within the NDZ'' (67 FR 35740). If this rule were implemented, all vessels in the sanctuary would have to secure MSDs to prevent discharges of biodegradable effluent into the sanctuary.

Classification

National Environmental Policy Act

A draft environmental assessment (EA) has been prepared to evaluate the proposed rulemaking. NOAA proposes to prohibit discharges of biodegradable effluent incidental to vessel use and generated by MSDs in the entire FKNMS and to require MSDs be locked. This action will eliminate at least one contributing factor to declining water quality within the FKNMS. Improved water quality is necessary for the maintenance and enhancement of the sanctuary's biological resources, as well as of the recreational opportunities they provide. The no action alternative would continue the discharge of treated sewage from MSDs into the federal waters of the FKNMS and will continue to contribute to the decline of water quality. Poor water quality threatens not only the unique biological resources of the FKNMS, but also the viability of the local economy, which depends on the ability of these resources to attract visitors. Copies of the EA are available at the address and Web site listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on this proposed rule will be published in the final environmental assessment and preamble to the final rule.

Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act

This rule does not contain any new or revisions to the existing information collection subject to the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Notwithstanding any other provision of the 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 PRA, unless that collection of information displays a currently valid OMB Control Number.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is analyzed in the EA and is summarized as follows:

In response to an increasing boating population, and the resulting higher discharge potential, in south Florida, NOAA proposes to prohibit discharges of biodegradable effluent incidental to vessel use and generated by MSDs, and to add a new requirement that MSDs be locked to prevent discharges while in the FKNMS from all vessels in the sanctuary.

There were 25,370 pleasure and 2,653 commercial vessels registered in Monroe County in 2007. Since no studies exist on transient vessels in the Florida Keys, these registrations represent the approximate population of vessels that utilize the Florida Keys. For purposes of this analysis, only commercial vessels will be analyzed since pleasure vessels are not considered small entities under the Regulatory Flexibility Act. Of the total number of commercial vessels, NOAA currently does not have an estimate of the number of vessels that use the Florida Keys that have MSDs on board. However, vessels 26 feet or longer with an enclosed cabin with berthing facilities (as noted in the Florida Clean Vessel Act) are currently required to have a holding tank installed. Therefore, NOAA will use this criteria to approximate the number of impacted entities as they are most likely to be required to use a pump out facility or discharge their waste outside of the sanctuary boundaries. But, NOAA acknowledges that the total universe of affected entities may be larger as there may be some unknown number of vessels smaller than 26 feet that may have MSDs. In Monroe County, 1,080 of the 2,653 (40.7%) registered commercial vessels are 26 feet or longer. Of the 1,080 registered commercial vessels, NOAA is not able to estimate the number of small entities as it does not collect this data, and thus will consider all 1,080 vessels to be small entities.

Any economic impact of the proposed regulation would be limited to those vessel operators who currently discharge sewage waste into the federal waters area of the FKNMS. FKNMS does not have any data on the number of vessels that do this as opposed to utilizing one of the 38 pump out stations located throughout the sanctuary. FKNMS also does not have complete information on the number of boats that do use pump out stations to dispose of waste. Therefore, it is assumed that all 1,080 estimated commercial vessels with MSDs that use the Florida Keys would be affected. The additional costs to those vessel operators could include additional fuel costs to travel to pump out stations, the cost of the pump outs, and the value of their travel time to the pump out station. Vessels 26 feet or longer with an enclosed cabin with berthing facilities (as noted in the Florida Clean Vessel Act) are currently required to have a holding tank installed. Therefore, the installation of that equipment would not be considered an additional cost under the proposed regulation.

EPA, Florida Department of Environmental Protection, and Monroe County conducted a survey of the existing pump outs in the Florida Keys and determined that the range of costs to pump out was from $5.00 to $25.00, with the majority of pump out facilities charging $5.00. It is a condition of State grant funds that a marina that receives a grant for installation of pumpout facilities must charge a maximum of $5.00 per pump out. The number of times a tank will need to be pumped out will depend on usage. Live-aboards will have to pump out regularly while less frequent boat users will need to empty the tank much less often. Using a range between $5 (most pump outs cost) to $10.00 (high end of pump out cost), and one pump out per week, results in an estimated annual cost of $130 to $520

per vessel per year. Therefore, if every registered vessel in Monroe County were previously discharging all waste into the federal waters as opposed to using a pumpout station, the annual cost to Monroe County boaters (assuming 1,080 vessels are affected) is expected to be $140,400 to $561,600. It should also be noted that pump out fees may qualify as a business expense and may be tax deductible for some vessel owners, so the actual economic impact may be less.

The elimination of vessel discharges in the federal waters of the FKNMS may have a positive socioeconomic impact from improved water quality and healthier reefs and the indirect effects that has on the economy. For example, the tourist-based economy of the Florida Keys depends upon clean water and abundant natural resources. If vessels were allowed to continue to discharge the impacted area, the sanctuary's water quality would decrease, which would negatively impact the health and quantity of the sanctuary's unique biological resources, and ultimately impact the sanctuary as a tourist destination.

For the reasons above, the Chief Counsel for Regulation certified that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

John H. Dunnigan,

Assistant Administrator for Ocean Services and Coastal Zone Management.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Wildlife, Wildlife refuges, Wildlife Management Areas, Sanctuary Preservation Areas, Ecological Reserves, Areas to be Avoided, State of Florida, U.S. Coast Guard.

For the reasons above, NOAA proposes to amend title 15, part 922 of the Code of Federal Regulations as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 15 U.S.C. 1431 *et seq.*

2. Amend § 922.163 as follows:

a. By removing paragraph (a)(4)(i)(B);

b. By redesignating paragraphs (a)(4)(i)(C) and (a)(4)(i)(D) as (a)(4)(i)(B) and (a)(4)(i)(C), respectively;

c. By adding a new paragraph (a)(5)(vi) as follows:

§ 922.163 Prohibited activities—Sanctuary wide.

(a) * * *

(5) * * *

(vi) Having a marine sanitation device that is unlocked or that allows discharge or deposit of sewage.

* * * * *

[FR Doc. E9–27453 Filed 11–13–09; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AB04

Financial Crimes Enforcement Network; Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: FinCEN is issuing this notice of proposed rulemaking to amend the relevant Bank Secrecy Act (''BSA'') information sharing rules to allow certain foreign law enforcement agencies, and State and local law enforcement agencies, to submit requests for information to financial institutions. The rule also clarifies that FinCEN itself, on its own behalf and on behalf of other appropriate components of the Department of the Treasury, may submit such requests. Modification of the information sharing rules is a part of the Department of the Treasury's continuing effort to increase the efficiency and effectiveness of its anti-money laundering and counter-terrorist financing policies.

DATES: Written comments are welcome and must be received on or before December 16, 2009.

ADDRESSES: Those submitting comments are encouraged to do so via the Internet. Comments submitted via the Internet may be submitted at *http://www.regulations.gov/search/index.jsp*, Docket number Fincen–2009–0005, with the caption in the body of the text, ''Attention: Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, RIN 1506–XXXX.'' Comments may also be submitted by written mail to: Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183, Attention: Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, RIN 1506–AB04. Please submit comments by one method only. All comments submitted in response to this notice of proposed rulemaking will become a matter of public record; therefore, you should submit only information that you wish to make available publicly.

Inspection of comments: Public comments received electronically or through the U.S. Postal Service sent in response to a ''Notice and Request for Comment'' will be made available for public review as soon as possible on *http://www.regulations.gov*. All comments received may be physically inspected in the FinCEN reading room located in Vienna, VA. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 3.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (''USA PATRIOT ACT'') Act of 2001, Public Law 107–56 (''the Act''). Title III of the Act amends the anti-money laundering provisions of the Bank Secrecy Act, codified at 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5314 and 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR part 103. The authority of the Secretary of the Treasury (''the Secretary'') to administer the BSA has been delegated to the Director of FinCEN.

Of the Act's many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering is of paramount importance. Section 314 of the Act furthers this goal by providing for the sharing of information between the government and financial institutions, and among financial institutions themselves. As with many other provisions of the Act, Congress has charged the U.S. Department of the Treasury with developing regulations to implement these information-sharing provisions.

Subsection 314(a) of the Act states in part that:

[t]he Secretary shall * * * adopt regulations to encourage further cooperation among financial institutions, their regulatory authorities, and law enforcement authorities, with the specific purpose of encouraging regulatory authorities and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected based on credible evidence of engaging in terrorist acts or money laundering activities.

B. Overview of the Current Regulatory Provisions Regarding the 314(a) Program

On September 26, 2002, FinCEN published a final rule implementing the authority contained in section 314(a) of the Act.[1] That rule (''the 314(a) rule'') allows FinCEN to require U.S. financial institutions to search their records to determine whether they have maintained an account or conducted a transaction with a person that a Federal law enforcement agency has certified is suspected based on credible evidence of engaging in terrorist activity or money laundering.[2] Before processing a request from a Federal law enforcement agency, FinCEN also requires the requesting agency to certify that, in the case of money laundering, the matter is significant, and that the requesting agency has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use this authority (''the 314(a) program'').

Since its inception, the 314(a) program has yielded significant investigative benefits to Federal law enforcement users in terrorist financing and major money laundering cases. Feedback from the requesters and illustrations from sample case studies consistently demonstrate how useful the program is in enhancing the scope and expanding the universe of investigations. In view of the proven success of the 314(a) program, FinCEN seeks to broaden access to the program as outlined in the following paragraphs.

C. Objectives of Proposed Changes

a. Allowing Certain Foreign Law Enforcement Agencies To Initiate 314(a) Queries

In order to satisfy the United States' treaty obligation with certain foreign governments, FinCEN is proposing to extend the use of the 314(a) program to include foreign law enforcement agencies. On June 25, 2003, the Agreement on Mutual Legal Assistance between the United States and the European Union (EU) (hereinafter, the ''U.S.–EU MLAT'') was signed. Between 2004 and 2006, twenty-five bilateral implementing agreements also were signed by the United States and EU Member States. In 2006, the U.S.–EU MLAT, along with twenty-five bilateral instruments, was submitted to the U.S. Senate for its advice and consent to ratification. An additional two bilateral instruments, with Romania and Bulgaria, were concluded and submitted to the Senate in 2007, following those countries' accession to the EU. The U.S.–EU MLAT and all twenty-seven bilateral instruments were ratified by the President on September 23, 2008, upon the advice and consent of the U.S. Senate.

Article 4 of the U.S.–EU MLAT (entitled ''Identification of Bank Information'') obligates a requested Signatory State to search on a centralized basis for bank accounts within its territory that may be important to a criminal investigation in the requesting Signatory State. Article 4 also contemplates that Signatory States may search for information in the possession of a non-bank financial institution. Under Article 4, a Signatory State receiving a request may limit the scope of its obligation to provide assistance to terrorist activity and money laundering offenses, and many did so in their respective bilateral instruments with the United States. In addition, Article 4 makes clear that the United States and the EU are under an obligation to ensure that the application of Article 4 does not impose extraordinary burdens on States that receive search requests. Certain EU States are expected to accommodate search requests from the United States by querying a single centralized database which identifies all bank accounts within that State. In negotiating the terms of Article 4, the United States expressly envisioned that EU member States would be able to access the information sharing process created by the implementation of section 314(a) of the Act. Expanding that process to include certain foreign law enforcement requesters would greatly benefit the United States by granting law enforcement agencies in the United States with reciprocal rights to obtain information about matching accounts in EU member States.

Foreign law enforcement agencies would be able to use the 314(a) program in a way analogous to how Federal criminal law enforcement agencies currently access the program. Thus, a foreign law enforcement agency, prior to initiating a 314(a) query, would have to certify that, in the case of a money laundering investigation, the matter is significant, and that it has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use the 314(a) program. FinCEN also anticipates that the foreign request will be screened initially by a Federal law enforcement official serving as an attaché to the requesting jurisdiction. The application of these internal procedures will help ensure that the 314(a) program is utilized only in significant situations, thereby minimizing the cost on reporting financial institutions.

b. Allowing State and Local Law Enforcement Agencies To Initiate 314(a) Queries

By regulation, access to the 314(a) program currently is only available to Federal law enforcement agencies. When the section 314(a) rule was drafted, FinCEN considered expanding the process to include requesters from other types of law enforcement agencies. However, because of uncertainty about how the new information-sharing rules would impact financial institutions, FinCEN ultimately decided to defer expansion beyond Federal law enforcement agencies. FinCEN now has the benefit of drawing upon six years of experience in administering the section 314(a) rule. In that time, financial institutions have made necessary adjustments to comply with these rules and have developed more efficient ways to respond to section 314(a) requests.

Money laundering and terror-related financial crimes are not limited by jurisdiction or geography. Detection and deterrence of these crimes require information sharing across all levels of investigative authorities, to include State and local law enforcement, to ensure the broadest United States Government defense.

State and local law enforcement investigations run the gamut of criminal violations, to include money laundering and to a lesser extent, terrorist financing, and some of these investigations could benefit from the use of the 314(a) program. Access to the 314(a) program by State and local law enforcement would provide them a platform from which they could more effectively and efficiently fill information gaps, including those connected with multi-jurisdictional financial transactions, in the same manner as Federal law enforcement agencies. This expansion of the 314(a) program, in certain limited

[1] Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, 67 FR 60579 (Sept. 26, 2002).

[2] 31 CFR 103.100.

circumstances, to include State and local law enforcement authorities, would benefit overall efforts to ensure that all law enforcement resources are made available to combat money laundering and terrorist financing.

Therefore, the proposal would broaden 314(a) access to allow State and local law enforcement agencies to submit 314(a) queries. As is the case currently with requesting Federal criminal law agencies, State and local law enforcement, prior to initiating a 314(a) query, would have to certify that, in the case of a money laundering investigation, the matter is significant, and that it has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use the 314(a) program. The application of these internal procedures will help ensure that the 314(a) program will be utilized only in the most compelling situations, thereby minimizing the cost incurred by reporting financial institutions.

c. Clarifying That FinCEN, on Its Own Behalf and on Behalf of Appropriate Components of the Department of the Treasury, May Initiate 314(a) Queries

FinCEN's statutory mandate includes working to identify possible criminal activity to appropriate Federal, State, local, and foreign law enforcement agencies, and to support ongoing criminal financial investigations and prosecutions.[3] FinCEN also routinely assists the law enforcement community through proactive analyses to discover trends, patterns, and common activity in the financial information contained in BSA reports. FinCEN's use of the 314(a) program will greatly enhance the scope and utility of its case support efforts beyond the insights provided from the BSA data, thereby delivering critical information about significant criminal activity on a timelier basis. Accordingly, FinCEN would use the 314(a) program to submit self-initiated 314(a) queries.

FinCEN assists law enforcement by providing advanced or specialized analysis of BSA data on significant investigations involving offenses of money laundering or terrorist financing. These investigations often involve multiple locations or are otherwise linked to other investigations. A single 314(a) request issued by FinCEN could more efficiently coordinate and simultaneously support several investigations, thereby eliminating the need for separate requests from each investigating agency or jurisdiction.

There also are instances in which FinCEN's analytical products will benefit from access to the 314(a) program by providing a more complete picture of financial transactions and mechanisms, as well as interrelationships among investigative subjects and financial transactions or entities. In addition, other appropriate components of the Department of the Treasury that provide analytical support, such as the Department's counter-terrorist financing and money laundering efforts, will be better equipped to fulfill their missions when given access to the 314(a) program. It is anticipated that the findings from the use of the 314(a) program will reveal additional insights and overall patterns of suspicious financial activities.

II. Section-by-Section Analysis

A. Section 103.90(a)

FinCEN proposes to amend 31 CFR 103.90(a) by changing the definition of the term ''money laundering'' to include activity that would be criminalized by 18 U.S.C. 1956 or 1957 if such activity occurred in the United States. The change would allow the term to be applied to information requests by foreign law enforcement agencies. State and local law enforcement requesters would be subject to the same definition of money laundering that currently applies to Federal law enforcement agencies—i.e., activity that is criminalized by 18 U.S.C. 1956 or 1957. Thus, in the case of a significant money laundering matter, a State or local law enforcement agency seeking information under the section 314(a) program would have to certify that it is investigating activity that would be criminalized under 18 U.S.C. 1956 or 1957. Such activity could include, for example, conducting a financial transaction with proceeds of murder, kidnapping, or dealing in a controlled substance (as defined in section 102 of the Controlled Substances Act), which is punishable as a felony under State law.[4]

B. Section 103.100(a)(4)

FinCEN proposes to add 31 CFR 103.100(a)(4), which would define a ''law enforcement agency'' to include a Federal, State, local, or foreign law enforcement agency with criminal investigative authority, provided that the foreign law enforcement agency is from a jurisdiction that is a party to a treaty that provides for, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States with reciprocal access to information comparable to that obtainable under section 103.100. The addition of foreign law enforcement agencies would enable the United States to be compliant with its obligations under the U.S.–EU MLAT, thereby providing law enforcement agencies in the United States with the benefit of reciprocal access to information in EU member States. The U.S.–EU MLAT, and 27 bilateral instruments with EU Member States implementing its terms, require each EU member State to be able to search for the kind of information covered by 31 CFR 103.100 and to promptly report to the requesting State the results of such a search.

The addition of State and local law enforcement agencies would provide a platform for such agencies to deal more effectively with multi-jurisdictional financial transactions in the same manner as Federal law enforcement agencies. Access to the 314(a) program would provide State and local law enforcement agencies with another resource to aide in discovering the whereabouts of stolen proceeds.

C. Section 103.100(b)(1)

FinCEN proposes to amend section 103.100(b)(1) to make conforming changes to reflect the addition of State and local law enforcement agencies, and foreign law enforcement agencies, as potential requesters of information. These other categories of law enforcement agencies would be subject to the same standard now applicable to Federal law enforcement agencies—in particular, the requirement to certify that each individual, entity, or organization about which the law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering. To further ensure that financial institutions are not overwhelmed by information requests, FinCEN has, since 2003, adopted an additional operating procedure that requires Federal law enforcement agencies to further certify that, in the case of a money laundering investigation, the matter is significant. FinCEN intends to apply that same standard to State, local and certain foreign law enforcement agencies.

D. Section 103.100(b)(2)

FinCEN proposes to add new 31 CFR 103.100(b)(2) which would clarify that FinCEN may request directly, on its own behalf and on behalf of appropriate components of the Department of the Treasury, whether a financial institution or a group of financial institutions maintains or has maintained accounts

[3] *See* 31 U.S.C. 310.

[4] *See* 18 U.S.C. 1956(c)(7) (defining the term ''specified unlawful activity'' to include, inter alia, an offense listed in 18 U.S.C. 1961(1)).

for, or has engaged in transactions with, specified individuals, entities, or organizations. Such information requests shall be for the purpose of conducting analyses to deter and detect terrorist financing activity or money laundering. Adding FinCEN, itself and acting on behalf of other appropriate Treasury components, as a requester of information will increase the value of analytical support to law enforcement.

III. Administrative Matters

A. Executive Order 12866

It has been determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866 because it raises a novel policy issue. However, a regulatory impact analysis is not required.

B. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by that State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), FinCEN certifies that these proposed regulation revisions will not have a significant economic impact on a substantial number of small entities. The proposed revisions would allow certain other agencies to submit 314(a) requests, but would not change the substance of the search and reporting requirements. Thus, FinCEN estimates that any impact resulting from the proposal will not be significant.

D. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 at the following e-mail address: *oira_submission@omb.eop.gov,* with a copy to the Financial Crimes Enforcement Network by mail or the Internet at the addresses previously specified. As an alternative, comments may be submitted to OMB by fax to (202) 395–6974. Comments on the collection of information should be received by January 15, 2010. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information is presented to assist those persons wishing to comment on the information collection.

The collection of information in this proposal is in 31 CFR 103.100. The information will be used by Federal,[5] State, and local law enforcement agencies, as well as certain foreign law enforcement agencies, and FinCEN and other appropriate components of the Department of Treasury, in the conduct of investigating money laundering and terrorist financing activity. The collection of information is mandatory.

International Requests: FinCEN estimates that there would be no more than 60 requests for research submitted to the 314(a) program by foreign law enforcement agencies annually.[6]

State and Local Requests: While there are more than 18,000 State and local law enforcement agencies, FinCEN estimates that the number of cases that would meet the stringent 314(a) submission criteria would be relatively low. The majority of significant money laundering and terrorist financing related cases are worked jointly with Federal investigators and are thus already eligible for 314(a) request submission. FinCEN estimates that there would be no more than 50 State and local cases per annum of 314(a) requests that meet submission criteria.

FinCEN and appropriate components of the Department of the Treasury Requests: FinCEN estimates that the 314(a) program would be used by FinCEN and other appropriate Department components in fewer than 10 cases per annum. Taking into consideration the estimated number of potential use cases that would fit recommended internal 314(a) criteria, FinCEN does not believe that this expansion would be a significant strain on existing program resources.

Description of Recordkeepers: Covered financial institutions as defined in 31 CFR 103.100.

Estimated Number of Recordkeepers: On an annual basis, there are approximately 20,134 covered financial institutions, consisting of 15,106 commercial banks, savings associations, and credit unions, 4,793 securities broker-dealers, 139 future commission merchants, 79 trust companies, and 17 life insurance companies.

Estimated Average Annual Burden Hours per Recordkeeper: FinCEN estimates 120 search requests[7] per year associated with the recordkeeping requirement in this proposed rule and 9 subjects (including aliases) per request, resulting in an estimated 1,080 subjects per year. The estimated average burden associated with searching each subject is 4 minutes per subject. FinCEN therefore estimates that each recordkeeper will, on average, spend approximately 4,320 minutes, or roughly 72 hours per year to comply with the recordkeeping requirement in this proposed rule.

Estimated Total Annual Recordkeeping Burden: 1,449,648 annual burden hours (20,134 recordkeepers × 72 average annual burden hours per recordkeeper).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments: We specifically invite comments on: (a) Whether the proposed recordkeeping requirement is necessary for the proper performance of the mission of the Financial Crimes Enforcement Network, and whether the information shall have practical utility; (b) the accuracy of our

[5] The requirement in section 103.100(b)(2), concerning reports by financial institutions in response to a request from FinCEN on behalf of a Federal law enforcement agency, is not a collection of information for purposes of the Paperwork Reduction Act. See 5 CFR 1320.4(a)(2).

[6] These calculations were based on previous requests for information. A review of incoming requests from European Union countries revealed an average of about 350 cases per year from 2006–2008. Of these, approximately 75% (an average of 269) were money laundering and/or terrorism related, however, the majority were not identified as complex cases. Conversations with FinCEN personnel responsible for European Union indicated not more than 10% of the money laundering and/or terrorism related cases would be significant enough to meet 314(a) use criteria, however, it is anticipated that there may be additional requests that would be submitted outside of the normal Financial Intelligence Unit channels.

[7] Estimated requests per annum subject to the Paperwork Reduction Act include 10 from FinCEN, 50 from State/local enforcement, and 60 from foreign law enforcement agencies, for a total of 120 requests.

estimate of the burden of the proposed recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the recordkeeping requirement, 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 maintain the information.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

Proposed Amendments to the Regulations

For the reasons set forth above in the preamble, FinCEN proposes to amend 31 CFR part 103 as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Public Law 107–56, 115 Stat. 307.

2. Section 103.90(a) is revised to read as follows:

§ 103.90 Definitions.

* * * * *

(a) *Money laundering* means an activity criminalized by 18 U.S.C. 1956 or 1957, or an activity that would be criminalized by 18 U.S.C. 1956 or 1957 if it occurred in the United States.

* * * * *

3. Section 103.100 is amended by—

a. Adding new paragraph (a)(4);

b. Revising paragraph (b)(1);

c. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5);

d. Adding new paragraph (b)(2);

e. Revising newly redesignated paragraph (b)(3)(i);

f. Revising newly redesignated paragraph (b)(3)(iv)(B)(*1*);

g. Revising newly redesignated paragraph (b)(3)(iv)(B)(*2*);

h. Revising newly redesignated paragraph (b)(3)(iv)(C);

i. Revising newly redesignated paragraph (b)(4); and

j. Revising newly redesignated paragraph (b)(5).

The revisions read as follows:

§ 103.100 Information sharing between government agencies and financial institutions.

(a) * * *

(4) *Law enforcement agency* means a Federal, State, local, or foreign law enforcement agency with criminal investigative authority, provided that in the case of a foreign law enforcement agency, such agency is from a jurisdiction that is a party to a treaty that provides for, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States reciprocal access to information comparable to that obtainable under this section.

(b) *Information requests based on credible evidence concerning terrorist activity or money laundering*—(1) *In general.* A law enforcement agency investigating terrorist activity or money laundering may request that FinCEN solicit, on the investigating agency's behalf, certain information from a financial institution or a group of financial institutions. When submitting such a request to FinCEN, the law enforcement agency shall provide FinCEN with a written certification, in such form and manner as FinCEN may prescribe. At a minimum, such certification must: State that each individual, entity, or organization about which the law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering; include enough specific identifiers, such as date of birth, address, and Social Security number, that would permit a financial institution to differentiate between common or similar names; and identify one person at the agency who can be contacted with any questions relating to its request. Upon receiving the requisite certification from the requesting law enforcement agency, FinCEN may require any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization.

(2) *Requests from FinCEN.* FinCEN may solicit, on its own behalf and on behalf of appropriate components of the Department of the Treasury, whether a financial institution or a group of financial institutions maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization. Before an information request under this section is made to a financial institution, FinCEN or the appropriate Treasury component shall certify in writing in the same manner as a requesting law enforcement agency that each individual, entity or organization about which FinCEN or the appropriate Treasury component is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering. The certification also must include enough specific identifiers, such as date of birth, address, and Social Security number that would permit a financial institution to differentiate between common or similar names, and identify one person at FinCEN or the appropriate Treasury component who can be contacted with any questions relating to its request.

(3) *Obligations of a financial institution receiving an information request*—(i) *Record search.* Upon receiving an information request from FinCEN under this section, a financial institution shall expeditiously search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. A financial institution may contact the law enforcement agency, FinCEN or requesting Treasury component representative, or U.S. law enforcement attaché in the case of a request by a foreign law enforcement agency, which has been named in the information request provided to the institution by FinCEN with any questions relating to the scope or terms of the request. Except as otherwise provided in the information request, a financial institution shall only be required to search its records for:

* * * * *

(iv) * * *

(B)(*1*) A financial institution shall not disclose to any person, other than FinCEN or the requesting Treasury component, the law enforcement agency on whose behalf FinCEN is requesting information, or U.S. law enforcement attaché in the case of a request by a foreign law enforcement agency, which has been named in the information request, the fact that FinCEN has requested or has obtained information under this section, except to the extent necessary to comply with such an information request.

(*2*) Notwithstanding paragraph (b)(3)(iv)(B)(1) of this section, a financial institution authorized to share information under § 103.110 may share information concerning an individual,

entity, or organization named in a request from FinCEN in accordance with the requirements of such section. However, such sharing shall not disclose the fact that FinCEN has requested information concerning such individual, entity, or organization.

(C) Each financial institution shall maintain adequate procedures to protect the security and confidentiality of requests from FinCEN for information under this section. The requirements of this paragraph (b)(3)(iv)(C) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

* * * * *

(4) *Relation to the Right to Financial Privacy Act and the Gramm-Leach-Bliley Act.* The information that a financial institution is required to report pursuant to paragraph (b)(3)(ii) of this section is information required to be reported in accordance with a federal statute or rule promulgated thereunder, for purposes of subsection 3413(d) of the Right to Financial Privacy Act (12 U.S.C. 3413(d)) and subsection 502(e)(8) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(8)).

(5) *No effect on law enforcement or regulatory investigations.* Nothing in this subpart affects the authority of a Federal, State or local law enforcement agency or officer, or FinCEN or another component of the Department of the Treasury, to obtain information directly from a financial institution.

Dated: November 9, 2009.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E9–27447 Filed 11–13–09; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0840]

RIN 1625–AA09

Drawbridge Operation Regulation; Port of Coos Bay Railroad Bridge, Coos Bay, North Bend, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the drawbridge operation regulation for the Port of Coos Bay Railroad Bridge, Coos Bay, mile 9.0, at North Bend, Oregon by deleting the requirement for special sound signals used in foggy weather and to change the name of the owner. This rule is necessary to make the sound signals used at the bridge consistent with other bridges in the area and to eliminate the unnecessary special sound signals.

DATES: Comments and related material must reach the Coast Guard on or before January 15, 2010.

ADDRESSES: You may submit comments identified by the Coast Guard docket number USCG–2009–0840 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Austin Pratt, Chief, Bridge Section, Waterways Management Branch, Thirteenth Coast Guard District, telephone 206–220–7282, e-mail address *william.a.pratt@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking USCG–2009–0840, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver or mail your comment, it will be considered received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2009–0840'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0840'' and click ''Search''. Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of all comments received into any

of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request using one of the four methods under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed rule would remove the requirement at the Port of Coos Bay Railroad Bridge, Coos Bay, mile 9.0, at North Bend, Oregon for a bell to be rung continuously in foggy weather and for a siren to be sounded in foggy weather when the swingspan is closed. The movable span is normally kept in the open position except for the passage of trains or maintenance work. The proposed rule would also change the regulation to reflect the bridge's current owner as the Port of Coos Bay.

The bell and siren at this drawbridge are not standard requirements at drawbridges and there is nothing specific to the bridge that warrants the continued use of these special sound signals. Vessel traffic through the swingspan includes tugs and tows and a variety of recreational craft. Oceangoing ship traffic has diminished greatly in recent decades.

The operating regulations currently in effect for the bridge are found at 33 CFR 117.871. These state that the bridge be maintained normally in the open position except for the passage of trains or maintenance. The aforementioned sound signals are also prescribed.

Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.871 by deleting the requirements for the Coos Bay Railroad Bridge to use the special sound signals noted above. The rule will also change the regulation to reflect that the bridge's new owner is the Port of Coos Bay. The requirement that the bridge be normally maintained in the open position would not be changed.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this finding based on the fact that that the rule will have no known impact on the maritime public.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because it will have no known impact on any vessel traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how, and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Austin Pratt, Chief, Bridge Section, Waterways Management Branch, Thirteenth Coast Guard District, at (206) 220–7282. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship

between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Amend § 117.871 to read as follows:

§ 117.871 Coos Bay.

The draw of the Port of Coos Bay railroad bridge, mile 9.0 at North Bend, shall be maintained in the fully open position, except for the crossing of trains or maintenance.

Dated: October 15, 2009.

G.T. Blore,

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

[FR Doc. E9–27354 Filed 11–13–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0838]

RIN 1625–AA09

Drawbridge Operation Regulation; Snohomish River, Steamboat Slough, and Ebey Slough; Everett and Marysville, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the drawbridge operation regulation for the Burlington Northern Santa Fe Railroad drawbridge across Ebey Slough, mile 1.5, in Marysville, Washington so that two-hour notice would be required to open the bridge from 3:30 p.m. to 7 a.m. every day. The bridge will be opened on signal at all other times. The modification is necessary to allow Burlington Northern Santa Fe Railroad to reduce staffing of the bridge during periods requiring infrequent openings. The Coast Guard is also proposing additional minor changes to the drawbridge operation regulations covering the Snohomish River system to delete obsolete requirements.

DATES: Comments and related material must reach the Coast Guard on or before January 15, 2010.

ADDRESSES: You may submit comments identified by the Coast Guard docket number USCG–2009–0838 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Austin Pratt, Chief, Bridge Section, Waterways Management Branch, 13th Coast Guard District, telephone 206–220–7282, e-mail *william.a.pratt@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking USCG–2009–0838, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver or

mail your comment, it will be considered received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2009–0838'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0838'' and click ''Search''. Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request using one of the four methods under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The proposed rule would modify the drawbridge operation regulation for the Burlington Northern Santa Fe Railroad drawbridge across Ebey Slough, mile 1.5, in Marysville, Washington so that two-hour notice would be required to open the bridge from 3:30 p.m. to 7 a.m. every day. The bridge will be opened on signal at all other times. The railroad company requested this change to reduce staffing of the drawbridge during periods requiring infrequent openings.

The operating regulations currently in effect for the Ebey Slough Railroad Bridge are found at 33 CFR part 117, subpart A, the general operating regulations for drawbridges. The regulations require the bridge to open promptly on signal at any time, which requires constant presence of a drawtender.

The modification would make the regulations consistent with most of the other drawbridges in the lower Snohomish River system between Marysville and Everett, Washington. In 2008 the draw opened 128 times for vessels. For the first five months of 2009 the draw opened 95 times for vessels. These records indicate that the bridge opens on average less than once a day. Most vessels that require the swing span to open are recreational vessels and occasionally tugboats.

The Coast Guard is also proposing additional minor changes to the drawbridge operation regulations covering the Snohomish River system to delete obsolete requirements.

Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.1059 by adding a drawbridge operation regulation for the Burlington Northern Santa Fe Railroad drawbridge across Ebey Slough, mile 1.5, in Marysville, Washington to require two-hour notice to open the bridge from 3:30 p.m. to 7 a.m. every day. The bridge will be opened on signal at all other times.

The Coast Guard also proposes to change the regulations found in 33 CFR 117.1059 to delete obsolete requirements for the bridges over the Snohomish River, Steamboat Slough, and Ebey Slough. The changes include the deletion of special sound signals for the inability of the draw to open. The standard danger signal of five short blasts in rapid succession would be used instead as codified in the general regulations for drawbridge operations at Part 117.5 of 33 Code of Federal Regulations.

The requirement to toll a bell in fog when draws are open for vessel passage would also be deleted along with the requirement for constant attendance of drawtenders during freshets at those bridges that are otherwise required to have drawtenders present only to operate upon notice to open.

The foregoing are not general requirements at drawbridges. They were established decades ago when commercial navigation, especially log towing, was more frequent on the braided stream system of the lower Snohomish. Improvements in navigation, such as radio and radar, have greatly reduced the need for these measures. The constant attendance of drawtenders during freshets is not needed because there is less traffic in these waterways than when the original regulations were established.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this finding based on the fact that the changes proposed will have little, if any, impact on the ability of vessels to transit the areas affected.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which

might be small entities: The owners and operators of vessels needing to transit under the bridges affected. The rule will not have a significant economic impact on a substantial number of small entities, however, because the changes proposed will have little, if any, impact on the ability of vessels to transit under those bridges.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how, and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Austin Pratt, Chief, Bridge Section, Waterways Management Branch, 13th Coast Guard District, at (206) 220–7282. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Revise § 117.1059 to read as follows:

§ 117.1059 Drawbridge Operation Regulation; Snohomish River, Steamboat Slough, and Ebey Slough; Everett and Marysville, WA.

(a) The draws of the twin, SR529 highway bridges across the Snohomish River, mile 3.6, at Everett shall open on signal if at least one-hour notice is given. Monday through Friday, notice for opening shall be given to the drawtender at the SR529 highway bridge across Ebey Slough, at

Marysville, and at all other times to the drawtender at the twin SR529 highway bridges at Everett.

(b) The draw of the SR2 highway bridge across the Snohomish River, mile 6.9, at Everett, shall open on signal if at least four hours notice is given.

(c) The draw of the Burlington Northern Santa Fe railroad bridge across the Snohomish River, mile 15.5, at Snohomish need not open for the passage of vessels.

(d) The draw of the Burlington Northern Santa Fe railroad bridge across Steamboat Slough, mile 1.0, near Marysville, shall open on signal if at least four hours notice is given.

(e) The draws of the twin, SR529 highway bridges across Steamboat Slough, miles 1.1 and 1.2, near Marysville shall open on signal if at least four hours notice is given. Monday through Friday, notice for openings shall be given to the drawtender at the SR529 highway bridge across Ebey Slough, at Marysville, and at all other times to the drawtender at the twin SR529 highway bridges at Everett.

(f) The draw of the Burlington Northern Santa Fe railroad bridge across Ebey Slough, mile 1.5, at Marysville shall open on signal if two hours notice is given from 3:30 p.m. to 7 a.m. and promptly on signal at all other times.

(g) The draws of the SR529 highway bridge across Ebey Slough, mile 1.6, at Marysville, shall open on signal if at least one hour notice is given. Monday through Friday, notice for openings shall be given to the drawtender at this bridge and at all other times to the drawtender at the SR529 highway bridges across the Snohomish River at Everett.

Dated: October 15, 2009.

G.T. Blore,

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

[FR Doc. E9–27355 Filed 11–13–09; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2270; MB Docket No. 09–189; RM–11564]

Radio Broadcasting Services, Kahuku, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division seeks comments on a petition filed by Kona Coast Radio, LLC, proposing the allotment of FM Channel 296C3 at Kahuku, Hawaii. The reference coordinates for Channel 296C3 at Kahuku are 21–40–48 NL and 157–57–03 WL.

DATES: Comments must be filed on or before December 14, 2009, and reply comments on or before December 29, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the FCC interested parties should serve the petitioner, as follows: Victor A. Michael, Jr., 87 Jasper Lake Road, Loveland, CO 80537 (Principal of Petitioner).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–189, adopted October 21, 2009, and released October 23, 2009. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, http://www.bcpiweb.com.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 180 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact. For information regarding proper filing procedures for comments, see 47 CFR 1.4125 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73 – RADIO BRAODCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Kahuku, Channel 296C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–27368 Filed 11–13–09; 8:45 am]

BILLING CODE 6712–01–S

Notices

Federal Register

Vol. 74, No. 219

Monday, November 16, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0081]

Notice of Request for Extension of Approval of an Information Collection; Spring Viremia of Carp; Import Restrictions on Certain Live Fish, Fertilized Eggs, and Gametes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of live fish, fertilized eggs, and gametes to prevent the introduction of spring viremia of carp into the United States.

DATES: We will consider all comments that we receive on or before January 15, 2010.

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

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0081*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2009-0081, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0081.

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

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

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of live fish, fertilized eggs, and gametes, contact Dr. Betzaida Lopez, Staff Veterinarian, Technical Trade Services—Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale MD 20737; (301) 734-5677. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Spring Viremia of Carp; Import Restrictions on Certain Live Fish, Fertilized Eggs, and Gametes.

OMB Number: 0579-0301.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 et seq.), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, parts 92 through 98, of the Code of Federal Regulations. APHIS regulations in part 93 contain requirements to prevent the introduction of spring viremia of carp (SVC) into the United States.

SVC is a disease of certain species of finfish, caused by an eponymous rhabdovirus. The disease is considered extremely contagious, and there are currently no U.S.-approved vaccines or treatments for the virus.

In accordance with the regulations, APHIS restricts the importation of live fish, fertilized eggs, and gametes of SVC-susceptible species and the importation of diagnostic specimens or research materials containing viable SVC virus. The regulations involve information collection activities, including import permit applications, health certificates, diagnostic specimen applications, refusal of entry orders to dispose of fish, customs declarations for an import or intransit permit, cleaning and disinfection certificates, 72-hour notification to APHIS before arrival of shipments in the United States, and recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.102823 hours per response.

Respondents: Importers of SVC-susceptible live fish, fertilized eggs, and gametes and cultures/diagnostic specimens containing SVC virus.

Estimated annual number of respondents: 462.

Estimated annual number of responses per respondent: 42.484848.

Estimated annual number of responses: 19,628.

Estimated total annual burden on respondents: 2,018.21 hours. (Due to

averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 9th day of November 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–27400 Filed 11–13–09; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0080]

Notice of Request for Extension of Approval of an Information Collection; Classical Swine Fever Status of Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of live swine, pork, and pork products from Chile.

DATES: We will consider all comments that we receive on or before January 15, 2010.

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

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0080*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2009-0080, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0080.

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

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

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of live swine, pork, and pork products from Chile, contact Dr. Magde Elshafie, Staff Veterinarian, Technical Trade Services—Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale MD 20737; (301) 734-3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Classical Swine Fever Status of Chile.

OMB Number: 0579-0235.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 et seq.), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, parts 92 through 98, of the Code of Federal Regulations.

Part 94, § 94.25, allows the importation, subject to certain conditions, of live swine, pork, and pork products from certain regions, including Chile, that are free of classical swine fever (CSF). Among the conditions is a requirement for a certificate that must be completed by Chilean veterinary authorities prior to export. The certificate must identify both the region of export and the region of origin as regions designated in §§ 94.9 and 94.10 as free of CSF at the time the live swine, pork, or pork products were in the regions.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Chilean veterinary officers.

Estimated annual number of respondents: 4.

Estimated annual number of responses per respondent: 8.

Estimated annual number of responses: 32.

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

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 9th day of November 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–27401 Filed 11–13–09; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this

notice announces the Commodity Credit Corporation's (CCC) intention to request an extension of a currently approved information collection procedure in support of the Regulations—Financing Commercial Sales of Agricultural Commodities under Title I, Public Law 83–480; Request for Vessel Approval, Form CCC–105 and Request for Vessel Approval, Form CCC–105 (cotton); and Declaration of Sale, Form FAS–359.

DATES: Comments on this notice must be received by January 15, 2010.

ADDRESSES: Mail or deliver comments to Ronald Croushorn, Director, Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, 1400 Independence Ave., SW., Washington, DC 20250–1034, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ronald Croushorn, Director, Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, 1400 Independence Ave., SW., Washington, DC 20250–1034, or by telephone at (202) 720–3038, or by e-mail at *ronald.croushorn@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Regulations—Financing Commercial Sales of Agricultural Commodities under Title I, Public Law 83–480.

OMB Numbers: 0551–0005 (Records and Rule Keeping), 0551–0008 (Request for Vessel Approval Form), and 0551–0009 (Declaration of Sale Form) were combined into OMB Number 0551–0005 in 2003.

Expiration Date of Approval: January 31, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: Title I of the Food for Peace Act authorizes the CCC to finance the sale and exportation of agricultural commodities on concessional credit terms. This program was previously authorized by Title I of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 83–480). Suppliers of commodities and ocean transportation must retain records for 3 years. Prospective commodity suppliers must provide information to the U.S. Department of Agriculture (USDA) to determine eligibility. Commodity suppliers must report by telephone details of sales for price approval and submit to USDA, for approval, information on any amendments to the sales. Form FAS–359, ''Declaration of Sale,'' is the written record, signed by the commodity supplier, of the terms of sale as reported by telephone. Shipping agents nominated by importing countries must submit information to allow identification of possible conflicts of interest. Shipping agents or embassies submit pertinent shipping information on Form CCC–105 to facilitate approval by CCC of shipping arrangements. This approval is necessary to assure compliance with cargo preference requirements at the lowest cost to CCC. USDA must receive this document before it can generate the CCC–106, which must be issued before an ocean carrier can receive payment for ocean freight. The information collected is used by CCC to manage, plan, evaluate and account for government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate Number of Respondents: 9.

Estimate Number of Responses per Respondent: 2.

Estimated Burden of Hours per Response: .58.

Estimated Total Annual Burden on Respondents: 11 hours.

Copies of this information collection can be obtained from Tamoria Thompson-Hall, the Agency Information Collection Coordinator, at (202) 690–1690.

Request for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC on November 3, 2009.

Michael V. Michener,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. E9–27353 Filed 11–13–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0058]

Availability of an Environmental Assessment for a Biological Control Agent for Water Hyacinth

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to the control of water hyacinth (*Eichhornia crassipes*). The environmental assessment considers the effects of, and alternatives to, the release of an insect, *Megamelus scutellaris*, into the continental United States for use as a biological control agent to reduce the severity of water hyacinth infestations. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before December 16, 2009.

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

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0058*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2009-0058, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0058.

Reading Room: You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room

hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Shirley Wager-Page, Chief, Pest Permitting Branch, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1237; (301) 734-8453.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of an insect, *Megamelus scutellaris*, into the continental United States for use as a biological control agent to reduce the severity of water hyacinth infestations.

Water hyacinth originated in lowland tropical South America and was first introduced into the United States in the late 1800s. Its erect, free-floating habit and attractive flowers made its use popular in ornamental ponds and garden pools which inevitably led to the spread of the plant by humans. The individual rosettes reproduce to form extensive floating mats which, in mature stands, extend a meter or more above the water's surface. The invasiveness of water hyacinth results from its rapid growth, its ability to reinfest via seeds or plant fragments, and its lack of natural enemies. Infestations negatively affect water traffic, water quality, infrastructure for pumping and hydroelectric operations, water use, and biodiversity. The plant can also cause property damage during floods, water loss due to evapotranspiration, and an increase in mosquito populations.

Existing water hyacinth management options include chemical control, draining, and harvesting. However, these management measures are ineffective, expensive, temporary, have non-target impacts, or disturb the life cycles of the currently released insects used for biological control of water hyacinth. Thus, a permit application has been submitted to APHIS for the purpose of releasing an insect, *M. scutellaris*, into the continental United States for use as a biological control agent to reduce the severity of water hyacinth infestations.

APHIS' review and analysis of the proposed action are documented in detail in an environmental assessment (EA) titled ''Field Release of *Megamelus scutellaris*, Berg (Hemiptera: Delphacidae), for Biological Control of Water Hyacinth *Eichhornia crassipes* Mart. (Solms) (Pontederiales: Pontederiaceae) in the Continental United States'' (July 2009). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

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

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

Done in Washington, DC, this 9th day of November 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–27393 Filed 11–13–09 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

RIN: 0572–ZA01

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket Number: 0907141137–91375–05

RIN: 0660–ZA28

Broadband Initiatives Program and Broadband Technology Opportunities Program

AGENCIES: Rural Utilities Service (RUS), Department of Agriculture, and National Telecommunications and Information Administration (NTIA), Department of Commerce.s

ACTION: Joint Request for Information.

SUMMARY: RUS and NTIA announce the release of a joint Request for Information (RFI) seeking public comment on certain issues relating to the implementation of the Broadband Initiatives Program (BIP) and the Broadband Technology Opportunities Program (BTOP). This is the second joint RFI that the agencies have issued since the enactment of the American Recovery and Reinvestment Act of 2009 (Recovery Act), which established these broadband initiatives. The input the agencies expect to receive from this process is intended to inform the second round of funding. In particular, the agencies seek to gather information that will help them improve the broadband programs by enhancing the applicant experience and making targeted revisions to the first Notice of Funds Availability (NOFA), if necessary.

DATES: Comments must be received by November 30, 2009 at 5:00 p.m. Eastern Standard Time.

ADDRESSES: Interested parties are encouraged to file comments electronically via e-mail to broadbandrfi@ntia.doc.gov. Paper comments should be sent to: Broadband Initiatives Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Stop 1599, Washington, DC 20250, and Broadband Technology Opportunities Program, National Telecommunications and Information Administration, U.S. Department of Commerce, HCHB Room 4887, 1401 Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For general inquiries regarding BIP, contact David J. Villano, Assistant Administrator, Telecommunications Program, Rural Utilities Service, email: bip@wdc.usda.gov, telephone: (202) 690–0525. For general inquiries regarding BTOP, contact Anthony Wilhelm, Deputy Associate Administrator, Infrastructure Division, Office of Telecommunications and Information Applications, National Telecommunications and Information Administration, email: btop@ntia.doc.gov, telephone: (202) 482–2048.

SUPPLEMENTARY INFORMATION: On February 17, 2009, President Obama signed the Recovery Act into law.[1] The Recovery Act establishes five statutory purposes: to preserve and create jobs and promote economic recovery; to assist those most impacted by the recession; to provide investments needed to increase economic efficiency

[1] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

by spurring technological advances in science and health; to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and to stabilize state and local government budgets.[2]

Consistent with these statutory purposes, the Recovery Act provides RUS and NTIA with $7.2 billion to expand access to broadband services in the United States. In so doing, it recognizes the growing importance of access to broadband services to economic development and to the quality of life of all Americans. Specifically, the Recovery Act expands RUS's existing authority to make loans and provides new authority to make grants for the deployment and construction of broadband systems in rural America. The purpose of the expanded RUS broadband authority is to improve access to broadband in rural areas without service or that lack sufficient access to high-speed broadband service, and to facilitate economic development. In addition, the Recovery Act requires NTIA to establish BTOP, which makes available grants for deploying broadband infrastructure in unserved and underserved areas in the United States, enhancing broadband capacity at public computer centers, and promoting sustainable broadband adoption. In facilitating the expansion of broadband communications services and infrastructure, both programs will advance the objectives of the Recovery Act by spurring job creation and stimulating long-term economic growth and opportunity.

On March 9, 2009, RUS and NTIA jointly issued an initial RFI seeking public comment on issues relating to the implementation of these programs. More than 1,000 public comments were received in response to the RFI and these comments were used to develop the NOFA, which was published in the **Federal Register** on July 9, 2009. The NOFA allocated up to $4 billion in funding for BIP and BTOP projects, including Broadband Infrastructure projects, Public Computer Center projects, and Sustainable Broadband Adoption projects. It also set forth key definitions that are used in the programs, established basic eligibility requirements and evaluation criteria, and provided additional information for applicants on how to obtain funding. In response to the NOFA, RUS and NTIA received over 2,200 applications requesting nearly $28 billion in funding, with projects reaching across all 50 states, five territories, and the District of Columbia.

Before initiating the second round of funding, RUS and NTIA are requesting additional public comment on certain aspects of BIP and BTOP. RUS and NTIA seek to improve the applicant experience and strengthen the program impact of BIP and BTOP in achieving Recovery Act objectives. Please note that topics discussed in this request for information will not apply to the initial funding round, but will apply only to the second round.

Matters To Be Considered: Information is being sought on the topics discussed herein. Interested parties are invited to submit comments for the record on these topics. Comments must be received by November 30, 2009 at 5:00 p.m. Eastern Standard Time.

I. The Application and Review Process

A. Streamlining the Applications.

For the first round of funding, applicants were required to complete a broadband infrastructure application, public computer center application, or sustainable broadband adoption application, depending on the type of project being proposed. For each application, the NOFA required applicants to respond to a number of questions and submit certain data. Those applicants considered highly qualified after completion of step one of the review process were required to submit additional information during a step two ''due diligence'' phase to substantiate the representations provided in the application.[3] Some stakeholders, especially applicants completing the broadband infrastructure application, stated during the first round application process that completing the initial application was overly burdensome based on the questions asked and the number of attachments required. RUS and NTIA tentatively conclude that the application process should be streamlined. In what ways should RUS and NTIA streamline the applications to reduce the burden on applicants, while still obtaining the requisite information to fulfill the statutory requirements set forth in the Recovery Act? Should the agencies modify the two-step review process, and if so, how? Should certain attachments be eliminated, and if so, which ones? Should the agencies re-examine the use of a single application for applicants applying to both BIP and BTOP to fund infrastructure projects? How should NTIA link broadband infrastructure, public computer center and sustainable adoption projects through the application process?

1. New Entities.

What type of information should RUS and NTIA request from new businesses, particularly those that have been newly created for the purpose of applying for grants under the BIP and BTOP programs? For example, should the agencies eliminate the requirement to provide historical financial statements for recently-created entities?

2. Consortiums and Public-Private Partnerships.

Similarly, how should the application be revised to reflect the participation of consortiums or public-private partnerships in the application process? Should certain critical information be requested from all members of such groups, in addition to the designated lead applicant, to sufficiently evaluate the application? If so, what type of information should RUS and NTIA request?

3. Specification of Service Areas.

The broadband infrastructure application required applicants to submit data on a census block level in order to delineate the proposed funded service areas. Some applicants found this requirement burdensome. What level of data collection and documentation should be required of applicants to establish the boundaries of the proposed funded service areas?

4. Relationship between BIP and BTOP.

The Recovery Act prohibits a project from receiving funding from NTIA in areas where RUS has funded a project.[4] Section VI.C.1.a.i of the NOFA required that infrastructure applications consisting of proposed funded service areas which are at least 75 percent rural be submitted to and considered under BIP, with the option of additional consideration under BTOP.[5] According to the NOFA, NTIA will not fund such an application unless RUS has declined to fund it.[6] RUS and NTIA are presently reviewing joint applications consistent with the process set forth in the NOFA. Should these kinds of rural infrastructure applications continue to be required to be submitted to RUS or should the agencies permit rural applications to be submitted directly to NTIA, without having to be submitted to RUS as well, and if so, how should NTIA and RUS proceed in a manner that

[2] Recovery Act § 3(a), 123 Stat. at 115-16.

[3] 74 Fed. Reg. at 33107.

[4] Recovery Act, div. A, tit. I, 123 Stat. at 118-19.

[5] 74 Fed. Reg. at 33113.

[6] *Id.* at 33105.

rewards the leveraging of resources and the most efficient use of Federal funds? Are there situations where it is better to give a loan to an applicant as opposed to a grant? Are there applicants for which a loan would not be acceptable, and if so, how should the programs consider them?

B. Transparency and Confidentiality.

Consistent with the Administration's policy and the Recovery Act's objective to ensure greater transparency in government operations, RUS and NTIA are considering whether they should permit greater access, consistent with applicable Federal laws and regulations, to certain applicant information to other applicants, policymakers, and the public, including state and tribal governments. Should the public be given greater access to application data submitted to BIP and BTOP? Which data should be made publicly available and which data should be considered confidential or proprietary? For example, RUS and NTIA tentatively conclude that the application's executive summary should be made publicly available for the second round of funding.

C. Outreach and Support.

For the initial round of funding, RUS and NTIA provided multiple means of applicant support and outreach, including hosting national workshops and minority outreach seminars, publicly releasing an application guidance manual, posting responses to Frequently Asked Questions on www.broadbandusa.gov, and establishing a Help Desk that fielded thousands of telephone and e-mail inquiries. What method of support and outreach was most effective? What should be done differently in the next round of funding to best assist applicants?

D. NTIA Expert Review Process.

During the first round of funding, NTIA utilized panels of at least three independent reviewers to evaluate BTOP applications.[7] A number of stakeholders have questioned whether this is the most effective approach to evaluating BTOP applications. To further the efficient and expeditious disbursement of BTOP funds, should NTIA continue to rely on unpaid experts as reviewers? Or, should we consider using solely Federal or contractor staff?

[7] *Id.* at 33107.

II. Policy Issues Addressed in the NOFA

A. Funding Priorities and Objectives.

Section IV.B of the NOFA establishes the funding limits for the first round of BIP and BTOP funding.[8] In particular, RUS set aside approximately $2.4 billion in funding, with up to $1.2 billion available for last mile projects, up to $800 million available for middle mile projects and up to $325 million available for a national reserve. NTIA allocated up to $1.2 billion for broadband infrastructure projects, up to $50 million for public computer center projects, up to $150 million for sustainable broadband adoption projects, and up to $200 million as a national reserve. Many parties have publicly made suggestions as to how the NOFA could be modified to ensure that the Recovery Act funds make the greatest impact possible. RUS and NTIA welcome suggestions for targeted funding proposals and seek comment on how they can better target their remaining funds to achieve the goals of the Recovery Act. Below we set forth some examples of types of projects we could specifically target. We seek comment on these proposals as well as any others.

RUS and NTIA request commenters that are proposing a more targeted approach for round 2 projects to support their proposal with quantitative estimates of the projected benefits of adopting such an approach. For example, commenters should quantify the impact of their proposal based on such metrics as the number of community anchor institutions committing to service, the number of last mile providers committing to utilize middle mile projects, the number of end users reached by the proposal, the number of new jobs created, directly and indirectly, and the projected increase in broadband adoption rates, as well as any other metrics necessary to justify the adoption of their proposal and ensure that the benefits of the Recovery Act are being realized. Commenters should explain the basis and method of calculation for the quantifications they provide.

1. Middle Mile ''Comprehensive Community'' Projects.

Should RUS and/or NTIA focus on or limit round 2 funding on projects that will deliver middle mile infrastructure facilities into a group of communities and connect key anchor institutions within those communities? Ensuring that anchor institutions, such as community colleges, schools, libraries, health care facilities, and public safety organizations, have high-speed connectivity to the Internet can contribute to sustainable community growth and prosperity. Such projects also have the potential to stimulate the development of last mile services that would directly reach end users in unserved and underserved areas. Additionally, installing such middle mile facilities could have a transformative impact on community development by driving economic growth.

Should we give priority to those middle mile projects in which there are commitments from last mile service providers to use the middle mile network to serve end users in the community? Should the agencies' goal be to fund middle mile projects that provide new coverage of the greatest population and geography so that we can be assured that the benefits of broadband are reaching the greatest number of people? Should we target projects that create ''comprehensive communities'' by installing high capacity middle mile facilities between anchor institutions that bring essential health, medical, and educational services to citizens that they may not have today? Should certain institutions, such as educational facilities, be given greater weight to reflect their impact on economic development or a greater need or use for broadband services? If so, what specific information should RUS and NTIA request from these institutions?

To the extent that RUS and NTIA do focus the remaining funds on ''comprehensive community'' projects, what attributes should the agencies be looking for in such projects? For example, are they most sustainable to the extent that they are public-private partnerships through which the interests of the community are fully represented? Should we consider the number of existing community anchor institutions that intend to connect to the middle mile network as well as the number of unserved and underserved communities and vulnerable populations (i.e., elderly, low-income, minority) that it will cover? How should RUS and NTIA encourage appropriate levels of non-Federal (State, local, and private) matching funds to be contributed so that the potential impact of Federal funds is maximized? In addition, should we consider the extent of the geographic footprint as well as any overlap with existing service providers?

[8] *Id.* at 33110.

2. Economic Development.

Should RUS and/or NTIA allocate a portion of the remaining funds available under the BIP and BTOP programs to promote a regional economic development approach to broadband deployment? This option would focus the Federal broadband investment on communities that have worked together on a regional basis to develop an economic development plan. It would encompass a strategy for broadband deployment, and would link how various economic sectors benefit from broadband opportunities. Such a regional approach would seek to ensure that communities have the ''buy-in,'' and the capacity, and the long-term vision to maximize the benefits of broadband deployment. Using this option, NTIA and RUS could target funding toward both the short term stimulus of project construction and the region's longer term development of sustainable growth and quality jobs. For instance, rather than look at broadband investments in both rural and urban communities as stand-alone actions, should RUS and NTIA seek applications for projects that would systematically link broadband deployment to a variety of complementary economic actions, such as workforce training or entrepreneurial development, through targeted regional economic development strategic plans? Should funds be targeted toward areas, either urban or rural, with innovative economic strategies, or those suffering exceptional economic hardship? Should states or regions with high unemployment rates be specifically targeted for funding?

3. Targeted Populations.

Should RUS and NTIA allocate a portion of the remaining funds to specific population groups? For example, should the agencies revise elements of the BIP and BTOP programs to ensure that tribal entities, or entities proposing to serve tribal lands, have sufficient resources to provide these historically unserved and underserved areas with access to broadband service? Similarly, should public housing authorities be specifically targeted for funding as entities serving low-income populations that have traditionally been unserved or underserved by broadband service? How can funds for Public Computer Centers and Sustainable Broadband Adoption projects be targeted to increase broadband access and use among vulnerable populations? Should NTIA shift more BTOP funds into public computer centers than is required by the Recovery Act? In what ways would this type of targeted allocation of funding resources best be accomplished under the statutory requirements of each program? Should libraries be targeted as sites for public computer access, and if so, how would BTOP funding interact with e-Rate funding provided through the Schools and Libraries program?

4. Other Changes.

To the extent that we do target the funds to a particular type of project or funding proposal, how if at all, should we modify our evaluation criteria? How should we modify the application to accommodate these types of targeted funding proposals? For example, should any steps be undertaken to adjust applications for satellite systems that provide nationwide service, but are primarily intended to provide access in remote areas and other places not served by landline or wireless systems? Are there any other mechanisms the agencies should be exploring to ensure remaining funds have the broadest benefit? How might the agencies best leverage existing broadband infrastructure to reach currently unserved and underserved areas? Are there practical means to ensure that subsidies are appropriately tailored to each business case? For example, should the agencies examine applicant cost and revenue estimates, and adjust the required match accordingly? Could elements of an auction-like approach be developed for a particular class of applications or region? If so, how would the agencies implement such an approach in a manner that is practical within program constraints and timeliness?

B. Program Definitions.

Section III of the NOFA describes several key definitions applicable to BIP and BTOP, such as ''unserved area,'' ''underserved area,'' and ''broadband.''[9] These definitions were among the most commented upon aspects of the NOFA.

For example, a number of applicants have suggested that the definitions of unserved and underserved are unclear and overly restrictive; that they kept many worthy projects, particularly those in urban areas, from being eligible for support; that there was insufficient time to conduct the surveys or market analyses needed to determine the status of a particular census block area; and that they discouraged applicants from leveraging private investment for infrastructure projects. In what ways should these definitions be revised? Should they be modified to include a specific factor relating to the affordability of broadband service or the socioeconomic makeup of a given defined service area, and, if so, how should such factors be measured? Should the agencies adopt more objective and readily verifiable measures, and if so, what would they be? How should satellite-based proposals be evaluated against these criteria?

With respect to the definition of broadband, some stakeholders criticized the speed thresholds that were adopted and some argued that they were inadequate to support many advanced broadband applications, especially the needs of large institutional users. Should the definition of broadband include a higher speed and should the speeds relate to the types of projects? Should the agencies incorporate actual speeds into the definition of broadband and forego using advertised speeds? If so, how should actual speeds be reliably and consistently measured?

The NOFA defines ''remote area'' as an unserved, rural area 50 miles from the limits of a non-rural area.[10] The rural remote concept aims to address the prohibitive costs associated with broadband deployment in communities that are small in size and substantially distant from urban areas and their resources. The definition adopted in the NOFA was intended to ensure that the most isolated, highest-cost to serve, unserved communities could receive the benefit of up to 100 percent grant financing. The geographic factor upon which an area was determined to be eligible was its distance from a non-rural area; in this case, 50 miles. RUS heard from many interested parties, including members of Congress, on this definition. Many believed it was overly restrictive, thereby eliminating too many areas that were not 50 miles or more from a non-rural area but were nonetheless a fair distance away and unserved. Comment is requested on the definition of remote area, as well as whether this concept should be a factor in determining award decisions. Should factors other than distance be considered, such as income levels, geographic barriers, and population densities?

C. Public Notice of Service Areas.

Section VII.B of the NOFA allowed for existing broadband service providers to comment on the applicants' assertions that their proposed funded service areas are unserved or underserved.[11] Some stakeholders have suggested that this rule may reduce incentives for

[9] *Id.* at 33108.

[10] *Id.* at 33109.

[11] *Id.* at 33122.

applicants to participate in the BIP and BTOP programs because of the risk that their applications may be disqualified from funding on the basis of information submitted by existing broadband service providers that they have no means to substantiate or rebut. How should the public notice process be refined to address this concern? What alternative verification methods could be established that would be fair to the applicant and the entity questioning the applicant's service area? Should the public notice process be superseded where data becomes available through the State Broadband Data and Development Grant Program that may be used to verify unserved and underserved areas? What type of information should be collected from the entity questioning the service area and what should be publicly disclosed?

D. Interconnection and Nondiscrimination Requirements.

Section V.C.2.c of the NOFA establishes the nondiscrimination and interconnection requirements.[12] These requirements generated a substantial amount of debate among applicants and other stakeholders. Although RUS and NTIA are not inclined to make significant changes to the interconnection and nondiscrimination requirements, are any minor adjustments to these requirements necessary? In particular, should they continue to be applied to all types of infrastructure projects regardless of the nature of the entity? Should the scope of the reasonable network management and managed services exceptions be modified, and if so, in what way? Is it necessary to clarify the term ''interconnection'' or the extent of the interconnection obligation?

E. Sale of Project Assets.

Section IX.C.2 of the NOFA generally prohibits the sale or lease of award-funded broadband facilities, unless the sale or lease meets certain conditions.[13] Specifically, the agencies may approve a sale or lease if it is for adequate consideration, the purchaser agrees to fulfill the terms and conditions relating to the project, and either the applicant includes the proposed sale or lease in its application as part of its original request for grant funds or the agencies waive this provision for any sale or lease occurring after the tenth year from the date the grant, loan, or loan/grant award is issued. Some stakeholders have suggested that this rule is overly restrictive and is a barrier to participation in BIP and BTOP. Should this section be revised to adopt a more flexible approach toward awardee mergers, consistent with USDA and DOC regulations, while still ensuring that awardees are not receiving unjust enrichment from the sale of award-funded assets for profit?[14]

F. Cost Effectiveness.

How should NTIA and RUS assess the cost effectiveness or cost reasonableness of a particular project? For example, in the context of infrastructure projects, how should we consider whether the costs of deploying broadband facilities are excessive? In BTOP, one of the Project Benefits that NTIA considers is ''cost effectiveness,'' when scoring an application. This is measured based on the ratio of the total cost of the project to households passed. However, such costs will necessarily vary based on the particular circumstances of a proposed project. For example, extremely rural companies typically have much higher construction costs than more densely populated ones. Also, geographic areas that experience extreme weather or are characterized by difficult terrain will dictate higher per household costs. Similarly, the technology that is chosen to provide the service (e.g., fiber vs. wireless) would influence the costs. And finally, smaller companies as measured by subscriber count would necessarily have a higher cost per subscriber than larger companies. How should the agencies take these various factors into consideration when evaluating broadband infrastructure projects? What evidence should we require from applicants to ensure that unnecessary costs have not been added to the project?

G. Other.

What other substantive changes to the NOFA should RUS and NTIA consider that would encourage applicant participation, enhance the programs, and satisfy the goals of the Recovery Act?

III. Status

Interested parties are invited to submit written comments. Written comments that exceed five pages should include a one-page executive summary. Submissions containing ten (10) or more pages of text must include a table of contents and an executive summary. Interested parties are encouraged to file comments electronically via e-mail to broadbandrfi@ntia.doc.gov. Parties submitting documents containing ten (10) or more pages are strongly encouraged to submit them electronically. Comments provided via e-mail may be submitted in one or more of the formats specified below. Comments must be received by November 30, 2009 at 5:00 p.m. Eastern Standard Time.

Paper comments should be sent to: Broadband Initiatives Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Stop 1599, Washington, DC 20250, and Broadband Technology Opportunities Program, National Telecommunications and Information Administration, U.S. Department of Commerce, HCHB Room 4887, 1401 Constitution Avenue, NW, Washington, DC 20230. Please note that all material sent via the U.S. Postal Service (including ''Overnight'' or ''Express Mail'') is subject to delivery delays of up to two weeks due to mail security procedures. All written comments received will be posted at http://www.ntia.doc.gov/broadbandgrants/commentsround2.cfm. Paper submissions should also include a CD or DVD in HTML, ASCII, or Word format (please specify version). CDs or DVDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document.

Jonathan S. Adelstein,

Administrator, Rural Utilities Service.

Dated: November 9, 2009.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. E9–27359 Filed 11–13–09; 8:45 am]

BILLING CODE 3510–60–S

[12] *Id.* at 33110.

[13] *Id.* at 33123.

[14] *See, e.g.,* 15 C.F.R. §§ 14.32-37; 7 C.F.R. Part 3015.

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 0910281384–91385–01]

2009 Company Organization Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census is conducting the 2009 Company Organization Survey. The survey's data are needed, in part, to update the multilocation companies in the Business Register. The survey, which has been conducted annually since 1974, is designed to collect information on the number of employees, payroll, geographic location, current operational status, and kind of business for each establishment of companies with more

than one location. We have determined that annual data collected from this survey are needed to aid the efficient performance of essential governmental functions, and that this data have significant application to the needs of the public and industry. The data derived from this survey are not available from any other source.

ADDRESSES: The Census Bureau will furnish report forms to organizations included in the survey, and additional copies are available on written request to the Director, Bureau of the Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Cynthia M. Wrenn-Yorker, U.S. Bureau of the Census, Room 8K319, Washington, DC 20233–6100 (or by e-mail at: *Cynthia.M.Wrenn-Yorker@census.gov*).

SUPPLEMENTARY INFORMATION: Sections 182, 195, 224, and 225 of title 13 of the United States Code (U.S.C.) authorize the Census Bureau to undertake Surveys necessary to furnish current data on the subjects covered by the major censuses. This survey will provide continuing and timely national statistical data for the period between economic censuses. The next economic censuses will be conducted for the year 2012. The data collected in this survey will be within the general scope, type, and character of those that are covered in the economic censuses. Forms NC–99001 and NC–99007 (for single-location companies) will be used to collect the desired data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a 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 current, valid Office of Management and Budget (OMB) control number. In accordance with the Paperwork Reduction Act, 44 U.S.C., Chapter 35, the OMB approved Forms NC–99001 and NC–99007 on December 21, 2004 under OMB Control Number 0607–0444. We will furnish report forms to organizations included in the survey, and additional copies will be available on written request to the Director, Bureau of the Census, Washington, DC 20233–0101.

I have, therefore, directed that the 2009 Company Organization Survey be conducted for the purpose of collecting these data.

Dated: November 6, 2009.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. E9–27398 Filed 11–13–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 0909301330–91331–01]

Annual Surveys in the Manufacturing Area

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2009 Annual Surveys in the Manufacturing Area. The 2009 Annual Surveys consist of the Current Industrial Report surveys, the Annual Survey of Manufactures, the Business Research & Development (R&D) and Innovation Survey, and the Manufacturers' Unfilled Orders Survey. The annual data collected from these surveys are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

ADDRESSES: The Census Bureau will furnish report forms to organizations included in each survey. Additional copies of the surveys are available upon written request to the Director, U.S. Census Bureau Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky, Chief, Manufacturing and Construction Division, at (301) 763–4598 or by e-mail at *thomas.e.zabelsky@census.gov.*

SUPPLEMENTARY INFORMATION: Title 13, United States Code (U.S.C.), Sections 61, 81, 131, 182, 193, 224, and 225 authorizes the Census Bureau to conduct mandatory surveys necessary to furnish current data on the subjects covered by the major censuses. These surveys provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The data collected in the surveys will be within the general scope and nature of those inquiries covered in the economic census. The next economic census will be conducted for the year 2012.

Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production, stocks, unfilled orders, orders booked, consumption, and similar information. Survey questionnaires will be mailed to all, or a sample of establishments engaged in the production of the products covered by the following list of surveys:

	SURVEY TITLE
MA311D	Confectionery.
MA314Q	Carpets and Rugs.
MA321T	Lumber Production and Mill Stocks.
MA325F	Paints and Allied Products.
MA325G	Pharmaceutical Preparations, except Biologicals.
MA327C	Refractories.
MA327E	Consumer, Scientific, Technical, and Industrial Glassware.
MA331B	Steel Mill Products.
MA332Q	Antifriction Bearings.
MA333A	Farm Machinery and Lawn and Garden Equipment.
MA333D	Construction Machinery.
MA333F	Mining Machinery.
MA333M	Refrigeration, Air-conditioning, and Warm Air Heating Equipment.
MA333N	Fluid Power Products for Motion Control (Including Aerospace).
MA333P	Pumps and Compressors.
MA334A	Analytical and Biomedical Instruments.
MA334C	Control Instruments and Systems.
MA334D	Defense, Navigational and Aerospace Electronics.
MA334M	Consumer Electronics.
MA334Q	Electronics Components.
MA334T	Meters and Test Devices.
MA335E	Electric Housewares and Fans.
MA335F	Major Household Appliances.
MA335J	Insulated Wire and Cable.
MA335K	Wiring Devices and Supplies.
MA336G	Aerospace Industry (Orders, Sales and Backlog).

The Census Bureau conducts an annual counterpart for the following monthly and quarterly Current Industrial Report (CIR) surveys and the annual counterpart will cover only those establishments that are not canvassed, or do not report in the more frequent surveys. There is no duplication in reporting by establishments participating in the counterpart survey. The content of these annual counterpart surveys are identical to that of the more frequently monthly and quarterly CIR surveys listed below:

	SURVEY TITLE
M311C	Corn (Wet & Dry Producers of Ethanol).
M311H	Animal & Vegetable Fats and Oil (Warehouse Stocks).
M311J	Oilseeds, Beans, and Nuts (Primary Producers).
M311L	Fats and Oils.
M311M	Animal & Vegetable Fats and Oil (Consumption & Stocks).

SURVEY TITLE—Continued

M311N	Animal & Vegetable Fats and Oil (Production, Consumption, & Stocks).
M313N	Cotton and Raw Linters in Public Storage.
M313P	Consumption on the Cotton System and Stocks.
M336G	New Civil Aircraft and Aircraft Engines.
MQ311A	Flour Milling Products.
MQ313A	Textiles.
MQ315A	Apparel.
MQ315B	Socks Production.
MQ325A	Inorganic Chemicals.
MQ325B	Fertilizers and Related Chemicals.
MQ325F	Paint, Varnish, and Lacquer.
MQ327D	Clay Construction Products.
MQ333W	Metalworking Machinery.
MQ334P	Telecommunications.
MQ334R	Computers and Peripheral Equipment.

Annual Survey of Manufactures

The Annual Survey of Manufactures collects industry statistics, such as total value of shipments, employment, payroll, workers' hours, inventories, capital expenditures, cost of materials consumed, supplemental labor costs, etc. This is a sample survey covering all manufacturing industries including data on plants under construction but not yet in operation.

Business R&D and Innovation Survey

The Business R&D and Innovation Survey (BRDIS) measures annual spending on R&D and innovative activities by U.S. businesses. This survey replaces the Survey of Industrial Research and Development in 2008. The BRDIS collects global as well as domestic R&D spending, more detailed information about the R&D workforce, and information regarding innovation and intellectual property. The Census Bureau collects and compiles this information in accordance with a joint project agreement between the National Science Foundation (NSF) and the Census Bureau. The NSF publishes the results in its publication series. Pursuant to title 13 of the U.S.C., this is a mandatory data collection.

Manufacturers' Unfilled Orders Survey

The Manufacturers' Unfilled Orders Survey will collect data on manufacturing sales and unfilled orders in order to provide annual benchmarks for unfilled orders for the monthly Manufacturers' Shipments, Inventories, and Orders (M3) survey. The annual benchmarks for the shipments and inventory data in the Manufacturers' Unfilled Orders Survey are provided by the Annual Survey of Manufactures (ASM). The Manufacturers' Unfilled Orders Survey data will also be used by the Census Bureau to determine whether it is necessary to collect unfilled orders data for specific industries on a monthly basis; some industries are not requested to provide unfilled orders data on the M3 Survey.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. 3501–3520, the OMB approved the 2008 Annual Surveys under the following OMB control numbers: Current Industrial Reports—0607–0476; Annual Survey of Manufactures—0607–0449, Business R&D and Innovation Survey—0607–0912; and Manufacturers' Unfilled Orders Survey—0607–0561.

Based upon the foregoing, I have directed that the Annual Surveys in the Manufacturing Area be conducted for the purpose of collecting these data.

Dated: November 6, 2009.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. E9–27397 Filed 11–13–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–816)

Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Victoria Cho at (202) 482–3797, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Background

On September 30, 2008, the U.S. Department of Commerce (Department) published a notice of initiation of the administrative review of the antidumping duty order on corrosion–resistant carbon steel flat products from Korea, covering the period August 1, 2007, to July 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56794, 56796 (September 30, 2008). On September 8, 2009, the Department published the preliminary results of this review. *See Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 46110 (September 8, 2009). The final results of this review are currently due no later than January 6, 2010.

Extension of Time Limit of the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (Act), requires the Department to issue the final results of a review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days. *See also* 19 CFR 351.213(h)(2).

We determine that it is not practicable to complete the final results of this review within the original time limit because an issue concerning of application of quarterly costs in this case arose late in the review and requires additional time for analyses of certain information. Therefore, the Department is fully extending the time limit for the final results. The final results are now due not later than March 7, 2010. As that day falls on a Sunday, the final results are due no later than March 8, 2010. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant of the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). This notice is published pursuant to section 751(a)(1) and 777(i)(1) of the Act.

Dated: November 6, 2009.

Edward G. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–27445 Filed 11–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–557–813

Polyethylene Retail Carrier Bags From Malaysia: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 9, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Malaysia. The review covers exports of this merchandise to the United States by Euro Plastics Malaysia Sdn. Bhd. (Euro Plastics) for the period of review August 1, 2007, through July 31, 2008.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments and the revised cost information we received from Euro Plastics, we have made changes to the margin calculation for the final results of this review. The final weighted–average margin is listed below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: November 16, 2009.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Yang Jin Chun, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0180 and (202) 482–5760, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2009, the Department published the preliminary results of review and invited parties to comment. See *Polyethylene Retail Carrier Bags From Malaysia: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 32880 (July 9, 2009) (*Preliminary Results*). On August 10, 2009, Euro Plastics and the petitioners[1] filed case briefs. On August 17, 2009, Euro Plastics and the petitioners filed rebuttal briefs. There was no hearing requested or conducted for this administrative review.

[1] The Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation.

Scope of the Order

The merchandise subject to this antidumping duty order is PRCBs which may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches (15.24 cm) but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of the Comments Received

All issues raised in the case briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Acting Deputy Assistant Secretary John M. Andersen to Acting Assistant Secretary Ronald K. Lorentzen dated November 6, 2009, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memo and attached to this notice as an Appendix. The Decision Memo, which is a public document, is on file in the Central Records Unit (CRU) of the main Department of Commerce building, Room 1117, and is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memo are identical in content.

Sales Below Cost in the Home Market

The Department conducted an investigation to determine whether Euro Plastics made home–market sales at prices below the cost of production. See *Preliminary Results*, 74 FR at 32882. As a result of its investigation, the Department disregarded certain below–cost home–market sales for the preliminary results. For the final results, in accordance with section 773(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department has continued to disregard certain below–cost home–market sales.

Changes Since the Preliminary Results

Based on our analysis of comments received and based on our own analysis of the *Preliminary Results*, we have made revisions that have changed the results for Euro Plastics. We have corrected programming and ministerial errors in the margin calculations we included in the *Preliminary Results*. A detailed discussion of each correction we made is in the final analysis memorandum for Euro Plastics which is on file in the CRU of the main Department of Commerce building, Room 1117.

Final Results of Review

As a result of our review, we determine that a margin of 56.13 percent exists for Euro Plastics for the period August 1, 2007, through July 31, 2008.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries of merchandise produced and/or exported by Euro Plastics. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an importer/customer–specific assessment rate or value for subject merchandise. See also section 751(a)(2)(C) of the Act.

With respect to export–price (EP) sales, we divided the total dumping margins for each importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per–unit dollar amount against each unit of merchandise on each of that importer's or customer's entries during the period of review. For constructed export–price (CEP) sales, we divided the total dumping margins for the reviewed sales by the total entered value of those

reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries during the period of review.

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) (*Assessment of Antidumping Duties*). This clarification will apply to entries of subject merchandise during the period of review produced by Euro Plastics 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 *Assessment of Antidumping Duties*.

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review.

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of PRCBs entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) the cash–deposit rate for Euro Plastics will be 56.13 percent; (2) for previously investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published in the *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia*, 69 FR 34128, 34129 (June 18, 2004) (*Final Determination*); (3) if the exporter is not a firm covered in this review or the less–than-fair–value investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash–deposit rate will be 84.94 percent, the all–others rate for this proceeding published in the *Final Determination*. These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties. See 19 CFR 351.402(f)(3).

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the APO itself. See also 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 6, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix

1. Product-Specific Resin Cost
2. G&A and Financial Expenses
3. Product-Specific Yield Losses
4. Home-Market Sales Tax and Import Duties
5. Home-Market Freight Expenses
6. Home-Market Credit Expense
7. Standard Weight versus Actual Weight
8. U.S. Indirect Selling Expenses
9. U.S. Discounts

[FR Doc. E9–27440 Filed 11–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Indirect Cost Rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Years 2007 and 2008

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of indirect cost rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Years 2007 and 2008.

SUMMARY: The National Oceanic and Atmospheric Administration's (NOAA's) Damage Assessment, Remediation, and Restoration Program (DARRP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal years (FY) 2007 and 2008. The indirect cost rates for these fiscal years and dates of implementation are provided in this notice. More information on these rates and the DARRP policy can be found at the DARRP Web site at *http://www.darrp.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, contact LaTonya Burgess at 301–713–4248, ext. 211, by fax at 301–713–4389, or e-mail at *LaTonya.Burgess@noaa.gov.*

SUPPLEMENTARY INFORMATION: The mission of the DARRP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The DARRP consists of three component organizations: the Office of Response and Restoration (ORR) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel for Natural Resources (GCNR). The DARRP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

Consistent with Federal accounting requirements, the DARRP is required to account for and report the full costs of its programs and activities. Further, the DARRP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARRP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

The DARRP's Indirect Cost Effort

In December 1998, the DARRP hired the public accounting firm Rubino & McGeehin, Chartered (R&M) to: Evaluate the DARRP cost accounting system and

allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARRP. A **Federal Register** notice on R&M's effort, their assessment of the DARRP's cost accounting system and practice, and their determination regarding the most appropriate indirect cost methodology and rates for FYs 1993 through 1999 was published on December 7, 2000 (65 FR 76611). The notice and report by R&M can also be found on the DARRP Web site at *http://www.darrp.noaa.gov.*

R&M continued its assessment of DARRP's indirect cost rate system and structure for FYs 2000 and 2001. A second federal notice specifying the DARRP indirect rates for FYs 2000 and 2001 was published on December 2, 2002 (67 FR 71537).

In October 2002, DARRP hired the accounting firm of Cotton and Company LLP (Cotton) to review and certify DARRP costs incurred on cases for purposes of cost recovery and to develop indirect rates for FY 2002 and subsequent years. As in the prior years, Cotton concluded that the cost accounting system and allocation practices of the DARRP component organizations are consistent with Federal accounting requirements. Consistent with R&M's previous analyses, Cotton also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost Base for all three DARRP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars, plus the application of NOAA's leave surcharge and benefits rates to direct labor. Direct labor costs for contractors from I.M. Systems Group (IMSG) were included in the direct labor base because Cotton determined that these costs have the same relationship to the indirect cost pool as NOAA direct labor costs. IMSG provided on-site support to the DARRP in the areas of injury assessment, natural resource economics, restoration planning and implementation, and policy analysis. IMSG continues to provide on-site support to the DARRP. A third federal notice specifying the DARRP indirect rates for FY 2002 was published on October 6, 2003 (68 FR 57672), a fourth notice for the FY 2003 indirect cost rates appeared on May 20, 2005 (70 FR 29280), and a fifth notice for the FY 2004 indirect cost rates was published on March 16, 2006 (71 FR 13356). The notice for the FY 2005 indirect cost rates was published on February 9, 2007 (72 FR 6221). The last notice for the FY 2006 rates was published on June 3, 2008 (73 FR 31679). Cotton's reports on these indirect rates can also be found on the DARRP Web site at *http://www.darrp.noaa.gov.*

Cotton reaffirmed that the Direct Labor Cost Base is the most appropriate indirect allocation method for the development of the FY 2007 and FY 2008 indirect cost rates.

The DARRP's Indirect Cost Rates and Policies

The DARRP will apply the indirect cost rates for FY 2007 and FY 2008 as recommended by Cotton for each of the DARRP component organizations as provided in the following table:

DARRP component organization	FY2007 indirect rate (percent)	FY2008 indirect rate (percent)
Office of Response and Restoration (ORR)	154.72	122.31
Restoration Center (RC)	130.78	133.87
General Counsel for Natural Resources (GCNR)	156.68	94.08

These rates are based on the Direct Labor Cost Base allocation methodology.

The FY 2007 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2006 and September 30, 2007. The FY 2008 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2007 and September 30, 2008. DARRP will use the FY 2008 indirect cost rates for future fiscal years, beginning with FY 2009, until subsequent year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARRP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

The DARRP indirect cost rate policies and procedures published in the **Federal Register** on December 7, 2000 (65 FR 76611), on December 2, 2002 (67 FR 71537), October 6, 2003 (68 FR 57672), May 20, 2005 (70 FR 29280), March 16, 2006 (71 FR 13356), February 9, 2007 (72 FR 6221), and June 3, 2008 (73 FR 31679), remain in effect except as updated by this notice.

Dated: October 30, 2009.

David Westerholm,

Director, Office of Response and Restoration.

[FR Doc. E9–27236 Filed 11–13–09; 8:45 am]

BILLING CODE 3510–JE–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 12/14/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service:

Service Type/Location: Custodial Service, MC Smith Post Federal Bldg & Courthouse, 202 Harlow Street, Bangor, ME.

NPA: Northern New England Employment Services, Portland, ME.

Contracting Activity: GSA/Public Buildings Service Region 1, Boston, MA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–27399 Filed 11–13–09; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2009–OS–0173]

Proposed Collection; Comment Request

AGENCY: Defense Security Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Security Service (DSS) announces a new public information collection and seeks public comments on the provision thereof. Comments are invited on: (a) Whether the proposed collection 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 hours of the information to be collected; and (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents.

DATES: Consideration will be given to all comments received by January 15, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rule Making Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160

Instructions: All submissions received must include agency name, docket number and title for this **Federal Register** document. The general policy of 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 contract 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 Defense Security Service, ATTN: Ms. Linda Johnston, Industrial Security Field Operations, 1340 Braddock Place, Alexandria, VA 22314, or call 703–494–5869.

Title; Associated Form; and OMB Number: Voice of Industry Survey; OMB Control Number 0704–TBD.

Needs and Uses: Executive Order 12829, ''National Industrial Security Program (NISP)'' Section 202 (a) stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to or who store or will store classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. The Executive Agent has the authority to issue, after consultation with affected agencies, standard forms or other standardization that will promote the implementation of the NISP. The Cognizant Security Agency (CSA), designated by the NISPOM, is responsible for determining the frequency of Security Reviews which may be increased or decreased for sufficient reason, consistent with risk management principles. Department of Defense Directive 5105.42, ''Defense Security Service,'' dated May 13, 1999, delineates the mission, functions and responsibilities of DSS. DSS functions and responsibilities include the administration and implementation of the Defense portion of the NISP. This survey will provide feedback on how well DSS is doing with respect to the administration and implementation of the NISP. Participation in the survey is strictly voluntary.

Affected Public: All active and cleared businesses, or other profit and non-profit organizations under Department of Defense Security Cognizance, approved for storage of classified materials.

Annual Burden Hours: 6469.

Number of Respondents: 12,938.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection of information requests the assistance of the Facility Security Officer or Senior Management Official to provide feedback as to how well DSS is doing with respect to the administration and implementation of the NISP. The survey will be distributed electronically via a web-based commercial survey tool.

Dated: October 26, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–27372 Filed 11–13–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management

Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 16, 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 9, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Annual Performance Report for Reading First.

Frequency: Annually.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Gov't.

Reporting and Recordkeeping Hour Burden:

Responses: 54.

Burden Hours: 810.

Abstract: Section 1202 of the Elementary and Secondary Act describes information to be included in the annual performance report required of Reading First grantees. Submission of the annual performance report (APR) via the data collection site has been taking place since 2004 and will continue to occur between October 15 and November 30 of each year. If APR data submitted during this timeframe are incomplete or inaccurate or if re-submission of data is requested by state education agencies (SEAs), additional data collection may occur at other times throughout the year. The Government Performance and Results Act (GPRA) report provides national-level achievement data for all comprehension and fluency outcome measures for each year of program implementation. The national-level information includes an average of the percentage of proficient students in SEAs administering the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) Oral Reading Fluency measure and the number of SEAs showing improvement in proficiency rates on each SEA's comprehension measure from the previous year to the current year. All schools are included in the GPRA report, regardless of when schools began implementation of the Reading First program.

Requests for copies of the 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 4124. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to 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. E9–27409 Filed 11–13–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 15, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 9, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: IEPS Language Resource Center (LRC) Customer Surveys.

Frequency: On Occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 416.

Burden Hours: 194.

Abstract: The purpose of this assessment is to assess the impact of the LRC program in enhancing the foreign language capacity of the United States. Three surveys will be conducted: a survey of LRC Project Directors; a survey of all members of the National Association of District Supervisors of Foreign Languages; and a survey of LRC Summer workshop participants. Results from the three surveys will inform the writing of a final report determining the impact of the LRC program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4172. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–27410 Filed 11–13–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Availability of the U.S. Department of Energy Interim Guidance on Packaging, Transportation, Receipt, Management, and Long-Term Storage of Elemental Mercury

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: This document provides general guidance with respect to standards and procedures necessary to support the packaging, transportation, receipt, management, and long-term storage of elemental mercury generated in the United States (U.S.) as required by the Mercury Export Ban Act of 2008 (the Act). Section 5 of the Act, *Long-Term Storage,* requires the Department of Energy (DOE) to prepare guidance that ''establishes procedures and standards for the receipt, management, and long term storage of elemental mercury.''

ADDRESSES: Ms. Letitia O'Conor, Elemental Mercury Storage Guidance Document Manager, Office of Environmental Compliance (EM–41), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The guidance document will be available at the DOE Web site at *http://www.em.doe.gov/* and *http://www.mercurystorageeis.com.*

FOR FURTHER INFORMATION CONTACT: For further information about the guidance document, please contact Ms. Letitia O'Conor, Office of Environmental Compliance (EM–41), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. You can contact Ms. O'Conor at (202) 586–6570 or by e-mail at: *letitia.o'conor@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

Mercury exposure can cause a number of adverse effects on human health. In an effort to reduce global mercury use and releases, and in order to eventually achieve reduced contamination levels in the environment, the Act was passed by Congress and signed into law by the President on October 14, 2008 (Pub. L. No. 110–414, enacted October 14, 2008). The Act prohibits the sale, distribution, or transfer of elemental mercury by Federal agencies to any other Federal agency, any State or local government agency, or any private individual or entity that is under the control of a federal agency (with certain limited exceptions). It also prohibits the export of elemental mercury from the U.S. effective January 1, 2013 (subject to certain essential use exceptions). Section 5 of the Act, *Long-Term Storage,* directs DOE to designate a facility or facilities for the long-term management and storage of elemental mercury generated within the U.S. DOE's facility or facilities must be operational by January 1, 2013, and be ready to accept custody of elemental mercury delivered to such a facility. The Act also requires DOE to assess fees based upon the *pro rata* costs of long-term management and storage.

DOE is developing a capability for the safe and secure long-term management and storage of elemental mercury as required by the Act. Accordingly, DOE needs to identify an appropriate facility or facilities to host this activity. To this end, DOE is preparing an environmental impact statement (EIS) in accordance with the National Environmental Policy Act (NEPA) of 1969, regulations of the President's Council on Environmental Quality (40 CFR parts 1500–1508) and DOE's implementing procedures (10 CFR part 1021). This EIS will evaluate alternatives for such a facility or facilities in order to have the requisite capability operational by January 1, 2013, as stipulated in the Act. The U.S. Environmental Protection Agency (EPA) is a cooperating agency for this EIS. In July, DOE published a Notice of Intent to prepare an EIS for the Long-Term Management and Storage of Elemental Mercury in the **Federal Register** (74 FR 31723, July 2, 2009). DOE expects to issue a Draft EIS in December 2009.

As required by the Act, DOE has prepared the *U.S. Department of Energy Interim Guidance on Packaging, Transportation, Receipt, Management, and Long Term Storage of Elemental Mercury* (the Interim Guidance) in consultation with EPA and state agencies. The Interim Guidance provides a framework for the standards and procedures associated with the long-term management of elemental mercury and the operation of a DOE-designated elemental mercury storage facility with a focus on the federal Resource Conservation and Recovery Act (RCRA) compliance of such a facility. The Interim Guidance may be supplemented and, as appropriate, superseded by the host State's RCRA permitting of the future elemental mercury storage facility.

This Interim Guidance provides standards and procedures to: (1) Generators who will assure the purity of the mercury and the integrity of the containers; (2) transporters who will load, secure, and transfer the mercury to the storage facility; and (3) operators of the storage facility who will be responsible for unloading the mercury from the transport vehicle, verifying that waste acceptance requirements have been met, and operating the storage facility.

This Interim Guidance is intended to be a reference for a wide variety of individual users, industries, and regulatory organizations impacted by the Act. Specifically, potential users of

this guidance document may include the following:

- Past generators, current owners, and custodians of elemental mercury;
- Recyclers of mercury bearing materials, wastes, and products (*e.g.,* companies that recover dental amalgam);
- Major industrial generators of mercury, including the minerals mining industry (especially gold), chlor-alkali (chlorine and caustic soda production) industry, and electrical lighting (*e.g.,* fluorescent lamp) industry;
- Private and government contractors managing stockpiled mercury;
- Shippers of elemental mercury;
- State and Federal regulatory agencies (*e.g.,* EPA); and
- Future operators of an elemental mercury storage facility (or facilities) for DOE.

As required by the Act, this Interim Guidance outlines existing requirements and standards and applicable procedures for the receipt (including acceptance criteria and packaging/transfer/transport requirements), management, and long-term storage of elemental mercury by DOE.

Issued in Washington, DC, on November 9, 2009.

Frank Marcinowski,

Acting Deputy Assistant Secretary for Technical and Regulatory Support, Office of Environmental Management.

[FR Doc. E9–27395 Filed 11–13–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8981–3]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board (GNEB) will hold a public teleconference on December 1, 2009 from 1 p.m. to 3 p.m. Eastern Standard Time. The meeting is open to the public. For further information regarding the teleconference and background materials, please contact Dolores Wesson at the number listed below.

Background: GNEB is a federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92463. GNEB provides advice and recommendations to the President and Congress on environmental and infrastructure issues along the U.S. border with Mexico. *Purpose of Meeting:* The purpose of this teleconference is to discuss and approve the Good Neighbor Environmental Board's draft advice letter to the President on the environmental effects of the U.S.-Mexico border fence and associated infrastructure. The Board will also continue discussion on the Thirteenth Report to the President.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Dolores Wesson at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *http://www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Dolores Wesson at (202) 564–1351 or e-mail her at: *wesson.dolores@epa.gov.* To request accommodation of a disability, please contact Dolores Wesson at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: November 3, 2009.

Dolores Wesson,

Designated Federal Officer.

[FR Doc. E9–27417 Filed 11–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8981–2]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Sierra Club and Valley Watch, Inc. (collectively ''Plaintiffs'') in the United States District Court for the District of Columbia: *Sierra Club, et al.* v. *Jackson,* No. 1:09–cv–00312 (D.D.C). Plaintiffs filed suit to compel the Administrator to respond to two administrative petitions seeking EPA's objection to a combined CAA Title V operating permit and Prevention of Significant Deterioration permit No. V–07–017 issued by the Kentucky Department of Environmental Protection for the proposed Cash Creek Generating Station in Cash Creek, Kentucky. Under the terms of the proposed consent decree, EPA has agreed to respond to the petitions by December 14, 2009.

DATES: Written comments on the proposed consent decree must be received by *December 16, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0671, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Mark Kataoka, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564–5584; fax number (202) 564–5603; *e-mail address: kataoka.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit alleging that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, two administrative petitions to object to the combined CAA Title V permit and Prevention of Significant Deterioration permit No. V–07–017 issued by the Kentucky Department of Environmental Protection for the proposed Cash Creek Generating Station in Cash Creek, Kentucky. Under the terms of the proposed consent decree, EPA has agreed to respond to the petitions by December 14, 2009, or within 3 days after entry of the consent decree, whichever date is later. In addition, the proposed consent decree states that, after EPA fulfills its obligations under the decree, and the Plaintiffs' claims for costs of litigation have been resolved pursuant to the process described in the decree, the case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written

comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0671) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 5, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–27415 Filed 11–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8981–5]

Proposed Consent Decree

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by the Environmental Integrity Project and Sierra Club (collectively ''Plaintiffs'') in the United States District Court for the District of Columbia: *Environmental Integrity Project, et al.* v. *EPA, No. 1:09–CV–00218 (D. D.C.).* On or about February 4, 2009, Plaintiffs filed a deadline suit alleging that EPA failed to perform a non-discretionary duty to review, and if appropriate revise, 40 CFR part 60, subpart G, New Source Performance Standards for Nitric Acid Plants. Under the terms of the proposed consent decree, on or before November 15, 2010, EPA will sign and submit for publication in the **Federal Register** one or a combination of the following: (a) A proposed rule containing revisions to NSPS Subpart G pursuant to CAA 111(b)(1)(B); and/or (b) a proposed and/or final determination under CAA 111(b)(1)(B) not to revise NSPS Subpart G. If EPA signs a proposed rule or proposed determination, then on or before November 15, 2011, EPA will sign and submit for publication in the **Federal Register**, one or a combination of the following: (a) A final rule containing revisions to NSPS Subpart G pursuant to CAA 111(b)(1)(B); and/or (b) a final determination under CAA 111(b)(1)(B) not to revise NSPS Subpart G.

DATES: Written comments on the proposed consent decree must be received by *December 16, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0854, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–

ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Scott Jordan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–7508; fax number (202) 564–5603; e-mail address: *jordan.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would settle a deadline suit filed by Plaintiffs for EPA's failure to review, and if appropriate revise, 40 CFR part 60, subpart G, New Source Performance Standards for Nitric Acid Plants. Under the terms of the proposed consent decree, on or before November 15, 2010, EPA will sign and submit for publication in the **Federal Register** one or a combination of the following: (a) A proposed rule containing revisions to NSPS Subpart G pursuant to CAA 111(b)(1)(B); and/or (b) a proposed and/or final determination under CAA 111(b)(1)(B) not to revise NSPS Subpart G. If EPA signs a propose rule or propose determination, then on or before November 15, 2011, EPA will sign and submit for publication in the Federal Register, one or a combination of the following: (a) A final rule containing revisions to NSPS Subpart G pursuant to CAA 111(b)(1)(B); and/or (b) a final determination under CAA 111(b)(1)(B) not to revise NSPS Subpart G. If EPA signed a final determination under CAA 111(b)(1)(B) not to revise NSPS Subpart G, then EPA shall have no obligation to take action. The proposed consent decree states that, after EPA fulfills its obligations under the decree, the case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0854) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 9, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–27412 Filed 11–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8981–1]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a lawsuit filed by Mossville Environmental Action Now, Louisiana Environmental Action Network, and Sierra Club (collectively, ''Plaintiffs'') in the United States District Court for the District of Columbia: *Mossville Environmental Action Now, et al.* v. *EPA,* No. 1:08–cv–01803 (D.D.C.). On October 22, 2008, Plaintiffs filed a complaint alleging that EPA failed to promulgate emission standards for major sources of hazardous air pollutant emissions from polyvinyl chloride and copolymers production facilities (''PVC Standards'') as required under section 112(e)(1)(E) of the CAA, 42 U.S.C. 7412(e)(1)(E). The proposed settlement agreement establishes deadlines by which the Administrator must sign the proposed and final rules for PVC Standards.

DATES: Written comments on the proposed settlement agreement must be received by *December 16, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0848, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Mark Kataoka, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5584; fax number (202) 564–5603; e-mail address: *kataoka.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

The settlement agreement resolves a lawsuit alleging that EPA failed to promulgate emission standards for major sources of hazardous air pollutant emissions from polyvinyl chloride and copolymers production facilities (''PVC Standards'') as required under section 112(e)(1)(E) of the CAA, 42 U.S.C. 7412(e)(1)(E).

The settlement agreement provides that within 10 days after the agreement is executed both parties will jointly notify the Court of this settlement agreement and request that the case be held in abeyance. The settlement agreement states that EPA shall sign a proposed rule to establish PVC Standards no later than October 29, 2010, and that EPA shall sign a final rule to establish PVC Standards no later than July 29, 2011. The settlement agreement further states if EPA fulfills its obligations under the agreement than Plaintiffs shall file a motion for voluntary dismissal of the complaint with prejudice. Furthermore, the agreement states that EPA shall reimburse Plaintiffs for their litigation costs and attorneys' fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How Can I Get a Copy of the Settlement Agreement?

Direct your comments to the official public docket for this action under Docket ID No. EPA–HQ–OGC–2009–0848, which contains a copy of the settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA

electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 6, 2009.

Patricia A. Embrey,

Acting Associate General Counsel.

[FR Doc. E9–27418 Filed 11–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0735; FRL–8797–8]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA is publishing this notice of such applications, pursuant to section 3(c)(4) of FIFRA.

DATES: Comments must be received on or before December 16, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number specified in Unit II. of the **SUPPLEMENTARY INFORMATION** by one of the following methods:

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

Instructions: Direct your comments to docket ID number specified for the pesticide of interest as shown in the registration application summaries. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone or e-mail. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DCD 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). If you are commenting in a docket that addresses multiple products, please indicate to which registration number(s) your comment applies.

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of FIFRA, and is publishing this notice of such applications pursuant to section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *Registration Number/File Symbol*: 100–542, 100–620. *Docket Number*: EPA–HQ–OPP–2008–0773. *Company name and address*: Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. *Active ingredient*: Prometryn. *Proposed Uses*: Carrot; celeriac; cilantro; leaf petioles subgroup 4B; okra; parsley. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

2. *Registration Number/File Symbol*: 100–815, 100–816. *Docket Number*: EPA–HQ–OPP–2009–0814. *Company name and address*: Syngenta Crop Protection, PO Box 18300, Greensboro, NC 27419. *Active ingredient*: S-metolachlor. *Proposed Use*: Sesame; melon subgroup 9A; bushberry subgroup 13–07B; lowbush blueberry; caneberry subgroup 13–07A; sweet sorghum; leafy brassica greens subgroup 5B; turnip greens; carrot; cucumber; okra; bulb onion subgroup 3–07A; and green onion subgroup 3–07B. *Contact*: Kathryn Montague, (703) 305–1243, *montague.kathryn@epa.gov*

3. *Registration Number/File Symbol*: 100–1131. *Docket Number*: EPA–HQ–OPP–2008–0811. *Company name and address*: Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. *Active ingredient*: Mesotrione. *Proposed Use*: Soybean. *Contact*: James M. Stone, (703) 305–7391, *stone.james@epa.gov*.

4. *Registration Number/File Symbol*: 264–660. *Docket Number*: EPA–HQ–OPP–2009–0813. *Company name and address*: Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient*: Glufosinate-ammonium. *Proposed Use*: Sweet corn. *Contact*: James M. Stone, (703) 305–7391, *stone.james@epa.gov*.

5. *Registration Number/File Symbol*: 279–3189, 279–3149, 279–3220. *Docket Number*: EPA–HQ–OPP–2008–0125. *Company name and address*: FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. *Active ingredient*: Sulfentrazone. *Proposed Uses*: Head and stem brassica subgroup 5A; leafy brassica greens subgroup 5B; melon subgroup 9A; fruiting vegetables Group 8; okra; succulent pea; flax; strawberry; and tuberous and corm vegetables subgroup 1C. *Contact*: Dianne L. Morgan, (703) 305–6217, *morgan.dianne@epa.gov*.

6. *Registration Number/File Symbol*: 352–IRO. *Docket Number*: EPA–HQ–OPP–2009–0057. *Company name and address*: E.I du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Active ingredient*: Nicosulfuron. *Proposed Use*: Established bermudagrass pastures. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

7. *Registration Number/File Symbol*: 352–529, 352–633. *Docket Number*: EPA–HQ–OPP–2009–0134. *Company name and address*: E.I du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Active ingredient*: Thifensulfuron methyl. *Proposed Use*: Safflower. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

8. *Registration Number/File Symbol*: 7969–113. *Docket Number*: EPA–HQ–OPP–2008–0937. *Company name and address*: BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. *Active ingredient*: Quinclorac. *Proposed Uses*: Pastures (including pastures grown for hay), Rangeland, Conservation Reserve Program Land (CRP), and switchgrass establishment and maintenance. *Contact*: Hope Johnson, (703) 305–5410, *johnson.hope@epa.gov*.

9. *Registration Number/File Symbol*: 46386–2. *Docket Number*: EPA–HQ–OPP–2008–0773. *Company name and address*: Verolit Chemical Manufacturers, Ltd. c/o Makhteshim Agan of North America, Inc., 4515 Falls of Neuse Rd., Suite 300, Raleigh, NC 27609. *Active ingredient*: Prometryn. *Proposed Uses*: Carrot; celeriac; cilantro; leaf petioles subgroup 4B; okra; parsley. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

10. *Registration Number/File Symbol*: 59639–RAL. *Docket Number*: EPA–HQ–OPP–2009–0796. Company name and address: Valent U.S.A. Corporation, 1600 Riviera Ave, Suite 200, Walnut Creek, CA 94596. *Active ingredient*: Bispyribac-sodium. *Proposed Uses*: Selective management of surface, submersed and emergent aquatic weeds in bayous, canals, drainage ditches, lakes, marshes, non-irrigation canals, ponds, reservoirs and other slow moving or quiescent bodies of water. *Contact*: Hope Johnson, (703) 305–5410, *johnson.hope@epa.gov*.

11. *Registration Number/File Symbol*: 59639–2, 59639–83, 59639–132, 59639–148. *Docket Number*: EPA–HQ–OPP–2009–0307. *Company name and address*: Valent U.S.A. Corporation, 1600 Riviera Ave, Suite 200, Walnut Creek, CA 94596. *Active ingredient*: Clethodim. *Proposed Uses*: Caneberry subgroup 13–07A; bushberry subgroup 13–07B; peach; artichoke, globe. *Contact*: James M. Stone, (703) 305–7391, *stone.james@epa.gov*.

12. *Registration Number/File Symbol*: 59639–97, 59639–99, 59639–119, *Docket Number*: EPA–HQ–OPP–2008–0885. *Company name and address*: Valent U.S.A. Corporation, 1600 Riviera Ave, Suite 200, Walnut Creek, California 94596. *Active ingredient*: Flumioxazin. *Proposed Uses*: Cucurbit group 9; leaf petioles subgroup 4B; hops. *Contact*: James M. Stone, (703) 305–7391, *stone.james@epa.gov*.

13. *Registration Number/File Symbol*: 62719–80, 62719–81, 62719–84. *Docket Number*: EPA–HQ–OPP–2009–0092. *Company name and address*: Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268–1054. *Active ingredient*: Clopyralid. *Proposed Uses*: Swiss chard; bushberry subgroup 13–07B; Annual strawberry. *Contact*: James M. Stone, (703) 305–7391, *stone.james@epa.gov*.

14. *Registration Number/File Symbol*: 63588–12. *Docket Number*: EPA–HQ–OPP–2009–0796. *Company name and address*: K-1 Chemical U.S.A., Inc., 11

Martine Avenue, Suite 970, White Plains, NY 10606. *Active ingredient*: Bispyribac-sodium. *Proposed Uses*: For formulation of herbicides for selective management of surface, submersed and emergent aquatic weeds in bayous, canals, drainage ditches, lakes, marshes, non-irrigation canals, ponds, reservoirs and other slow moving or quiescent bodies of water. *Contact*: Hope Johnson, (703) 305–5410, *johnson.hope@epa.gov*.

15. *Registration Number/File Symbol*: 66222–15. *Docket Number*: EPA–HQ–OPP–2008–0773. *Company name and address*: Makhteshim Agan of North America, Inc., 4515 Falls of Neuse Rd., Suite 300, Raleigh, NC 27609. *Active ingredient*: Prometryn. *Proposed Uses*: Carrot; celeriac; cilantro; leaf petioles subgroup 4B; okra; parsley. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

16. *Registration Number/File Symbol*: 66222–35 (Rimon 10 EC); 11678–57 (Rimon Technical). *Docket Number*: EPA–HQ–OPP–2009–0273. *Company name and address*: Makhteshim-Agan of North America, Inc., 4515 Falls of Neuse Rd., Raleigh, NC 27609. *Active ingredient*: Novaluron. *Proposed Uses*: Vegetables, cucurbit; vegetables, fruiting; beans (dry); Beans snap, succulent; berries, low growing, subgroup 13–07G; swiss chard; and sorghum. *Contact*: Jennifer Gaines (703) 305–5967, *gaines.jennifer@epa.gov*.

17. *Registration Number/File Symbol*: 71512–4;a 71512–6. *Docket Number*: EPA–HQ–OPP–2009–0826. *Company name and address*: ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 440077. *Active ingredient*: Fosthiazate. *Proposed Uses*: Potato and peanut. *Contact*: Rita Kumar, (703) 308–8291, *kumar.rita@epa.gov*.

18. *Registration Number/File Symbol*: 73049–UAT. *Docket Number*: EPA–HQ–OPP–2009–0262. *Company name and address*: Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. *Active ingredient*: Clothianidin. *Proposed Uses*: Poultry houses. *Contact*: Kable Bo Davis, (703) 306–0415, *davis.kable@epa.gov*.

19. *Registration Number/File Symbol*: 81880–2, 81880–15, 81880–18. *Docket Number*: EPA–HQ–OPP–2009–0797. *Company name and address*: Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. *Active ingredient*: Halosulfuron-methyl. *Proposed Uses*: Selective herbicide used for the control of weeds including nutsedge in pea and bean, succulent shelled, subgroup 6B; pea and bean, dried shelled, except soybean, subgroup 6C; vegetables, tuberous and corm, subgroup 1C; rhubarb; bushberry subgroup 13–07B; apple, and okra. *Contact*: Erik Kraft, (703) 308–9358, *kraft.erik@epa.gov*.

20. Registration Number/File Symbol: 59639–135. *Docket Number*: EPA-HQ-OPP–2009–0013. *Company name and address*: Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596. *Active ingredient*: Dinotefuran. *Proposed Uses*: Turnip greens. *Contact*: Rita Kumar, (703) 308–8291, *kumar.rita@epa.gov*.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 4, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–27423 Filed 11–13–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority, Comments Requested

November 5, 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 comments on this information collection should submit comments on January 15, 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 Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send then to: PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward–pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–1129.

Title: Broadband Speed Test and Unavailability Registry.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 7,300 respondents; 7,300 responses.

Estimated Time Per Response: .017 hours.

Frequency of Response: One–time and on occasion reporting requirements and third party disclosure requirement.

Obligation to Respond: Voluntary. Statutory authority is contained in the Broadband Data Improvement Act of 2008, Pub. L. No. 110–385 and the American Reinvestment and Recovery Act of 2009, Pub. L. No. 111–5.

Total Annual Burden: 124 Hours.

Privacy Act Impact Assessment: Yes. The FCC is concerned about the potential risks and effects of collecting, maintaining, and disseminating the personally identifiable information (PII) that is being collected as part of the

Broadband Plan and the Broadband Map and their related impact studies and filing processes. The PII that will be collected are the street address of speed test and registry participants. Therefore, the Commission intends to do the following:

1) create a system of records to cover the PII that is being collected as part of these information collection requirements;

2) conduct a Privacy Impact Assessment (PIA) in accordance with OMB Memorandum M–03–22 to examine and evaluate the protections for handling the PII as part of this new information collection; and

3) publish the system of records notice (SORN) in the Federal Register as required by 5 U.S.C. 552a(e).

Nature and Extent of Confidentiality: No personally identifiable information (PII) will be shared outside the FCC. However, the Commission will retain the street address information. As noted in Question 1 of the Supporting Statement, which will be submitted to the OMB, the FCC is committed to protecting the PII that is being collected, stored, maintained, and used as part of the Broadband Plan and the Broadband Map and the related impact studies and filing processes. The FCC intends to create a system of records, to perform a Privacy Act Impact analysis, and to publish the System of Records Notice (SORN) in the Federal Register.

The information collected through the voluntary Registry and speed tests, with the exception of any personally identifiable information, may be shared with public–private partnerships and with the Telecommunications Program of the United States Department of Agriculture (USDA) Rural Development Agency. This sharing regime is described in the Commission's Broadband Data Gathering Order of 2008 (FCC 08–89).

Need and Uses: The purpose of this collection is to enable citizens to voluntarily report the unavailability of broadband service at the household street address level and to test the speed and quality of their broadband service. This collection will provide the Commission with unique data on household availability of broadband and on relative broadband speeds.

The FCC's 2008 Broadband Data Gathering Order instructs the Commission to ''design and implement a voluntary system that households may use to report unavailability and speed of broadband Internet access service at their premises.''

The Commission sought emergency OMB approval for this new collection on October 20, 2009. The Commission received OMB approval for the emergency request on October 27, 2009. Emergency approvals are valid for six months only. Therefore, the Commission is seeking an extension of this collection (no change in reporting and/or third party disclosure requirements) in order to obtain the full three year clearance from the OMB.

The Commission will use the information collected to help determine the extent of broadband build–out and availability. The street address level collection will provide the Commission with additional data to help create an accurate National Broadband Map. The speed test and quality of service data will provide the Commission with an additional informational resource to consider that will be relevant to the National Broadband Plan and other proceedings.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. E9–27369 Filed 11–13–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 5, 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 comments on this information collection should submit comments on January 15, 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 Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send then to: PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward–pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–1128.

Title: National Broadband Plan Survey of Consumers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for–profit.

Number of Respondents: 5,100 respondents; 5,100 responses.

Estimated Time Per Response: .33 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this collection of information is contained in the Broadband Data Improvement Act of 2008, Pub. L. No. 110–385 and the

American Reinvestment and Recovery Act of 2009, Pub. L. No. 111–5.

Total Annual Burden: 1,683 hours.

Privacy Act Impact Assessment: No personally identified information will be transmitted to the Commission from the survey contractor as a matter of vendor policy.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Need and Uses: The Broadband Data Improvement Act of 2008, Pub. L. No. 110–385, Stat 4096 § 103(c)(1) directs the Commission to collect the information on the types of technology used to provide broadband to consumers, the price of such services, actual data transmission speeds, and the reasons for non–adoption of broadband service.

The Commission requested emergency OMB approval in October for this new information collection. The Commission received OMB approval on October 19, 2009. The Commission is now requesting an extension (no change in the reporting requirement) in order to obtain the full three year clearance from the OMB.

This collection of information will be accomplished through a national telephone survey of 5,000 consumers and face–to–face workshops with approximately 100 individuals throughout the United States. Consistent with one of the key reasons for this information collection, workshop participants will be non–adopters of broadband. The reason for holding these workshops is to elicit more in–depth responses from individuals to the questions being asked of non–adopters in the telephone survey. The workshops will add a narrative dimension to the reasons for non–adoption to the statistical information being collected in the telephone survey.

The Commission's Office of Strategic Planning (OSP) will use the information collected under this survey to help determine the extent of broadband Internet adoption, and use the data to inform policy recommendations under the National Broadband Plan. Information on consumers without broadband Internet at home will be used to carefully identify the nature and extent of the problem and used to develop policy recommendations through the National Broadband Plan which is due to congress by February 17, 2010.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. E9–27370 Filed 11–13–09; 8:45 am]

BILLING CODE 6712–01–S

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 27, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Gary R. Howell, Malta, Montana; to acquire voting shares of Milk River Banquo, Inc., and thereby indirectly acquire voting shares of Malta Banquo, Inc., and First Security Bank of Malta, all of Malta, Montana, and Valley Bank of Glasgow, Glasgow, Montana.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. The William R. Oliver GST Exempt Trust, the Jackson T. Oliver GST Exempt Trust, and 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 Corp, and thereby indirectly retain control of Valliance Bank, both in Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, November 9, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–27357 Filed 11–13–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 2009.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. The St. Henry Bancorp, Inc., St. Henry, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The St. Henry Bank, St. Henry, Ohio.

Board of Governors of the Federal Reserve System, November 9, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–27356 Filed 11–13–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Meetings; Sunshine Act

TIME AND DATE: November 19, 2009—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Docket No. 09–02: Notice of Proposed Rulemaking—Repeal of Marine Terminal Agreement Exemption.
2. Discussion of Notice of Inquiry Concerning Ocean Transportation Intermediary Agents.
3. FY 2010 Budget Status Update.

Closed Session

1. Section 15 Order on Competition, Rates and Services in the U.S.—Australia/New Zealand Northbound and Southbound Trades.
2. Passenger Vessel Operator Regulatory Initiatives.
3. Docket No. 07–02: Anderson International Transport and Owen Anderson Possible Violations of Sections 8(a) and 10 of the Shipping Act of 1984—Petition to Reopen Proceeding and Remand Proceeding to Administrative Law Judge.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. E9–27602 Filed 11–12–09; 4:15 pm]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The Atherosclerosis Risk in Communities Study (ARIC)

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 Heart, Lung, and Blood Institute (NHLBI), 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: The Atherosclerosis Risk in Communities Study (ARIC). *Type of Information Collection Request:* Revision of a currently approved collection (OMB No. 0925–0281). *Need and Use of Information Collection:* This project involves annual follow-up by telephone of participants in the ARIC study, review of their medical records, and interviews with doctors and family to identify disease occurrence. Interviewers will contact doctors and hospitals to ascertain participants' cardiovascular events. Information gathered will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in middle aged and older men and women. *Frequency of Response:* The participants will be contacted annually. *Affected Public:* Individuals or households; Businesses or other for profit; Small businesses or organizations. *Type of Respondents:* Individuals or households; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows: *Estimated Number of Respondents:* 11,992; *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours Per Response:* 0.2399; and *Estimated Total Annual Burden Hours Requested:* 2,877.4. The annualized cost to respondents is estimated at $54,583, assuming respondents' time at the rate of $17.0 per hour and physician time at the rate of $75 per hour. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN

[2010–2013]

Type of response	Number of respondents	Frequency of response	Average hours per response	Annual burden hours
Participant Follow-up	10,735	1.0	0.2500	2,683.8
Physician (or coroner) (for CHD) [1]	491	1.0	0.1667	81.8
Physician (for heart failure) [1]	190	1.0	0.0833	15.8
Participant's next-of-kin [1]	575	1.0	0.1667	95.9
Total	11,992	1.0	0.2399	2,877.4

[1] Annual burden is placed on doctors, hospitals, and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Hanyu Ni, Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number (301) 435–0448 or e-mail your request, including your address to: *NiHanyu@nhlbi.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 29, 2009.

Michael Lauer,

Director, Division of Cardiovascular Sciences, National Institutes of Health.

Dated: November 4, 2009.

Suzanne Freeman,

Chief, FOIA, NHLBI, National Institutes of Health.

[FR Doc. E9–27439 Filed 11–13–09; 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 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: Center for Scientific Review Special Emphasis Panel; NAED Member Conflicts.

Date: November 18, 2009.

Time: 12 p.m. to 2:30 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: Eduardo A. Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 9, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27456 Filed 11–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke; Special Emphasis Panel Stroke Clinical Trial.

Date: December 2, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *rc218u@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke; Special Emphasis Panel Resident Research RFA.

Date: December 11, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 9, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27458 Filed 11–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AMCB and ACE Member Conflicts.

Date: December 2, 2009.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ACE Member Conflicts.

Date: December 2, 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 (Virtual Meeting).

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–09–007: ARRA AREA Grants Panel 01.

Date: December 10, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: George W. Chacko, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301–435–1245, *chackoge@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 9, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27434 Filed 11–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 19, 2009, 6 p.m. to November 19, 2009, 10 p.m., Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC, 20036 which was published in the **Federal Register** on November 3, 2009, 74 FR 56855.

The meeting time has been changed to 8:30 a.m. to 5:30 p.m. on November 19, 2009. The meeting date and location remain the same. The meeting is closed to the public.

Dated: November 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27436 Filed 11–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Pre-doctoral Diversity.

Date: December 1, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Gubin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Proteomics.

Date: December 2–3, 2009.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alessandra M. Bini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Diabetes, Obesity, and Endocrinology.

Date: December 8–9, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ann A. Jerkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301–435–4514, *jerkinsa@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 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27438 Filed 11–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, November 11, 2009, 3 p.m. to November 11, 2009, 5 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on October 2, 2009, 74 FR 50975.

The meeting will be held on November 30, 2009. The time and the location of the meeting remains the same. The meeting is closed to the public.

Dated: November 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27437 Filed 11–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: December 9, 2009.

Time: 8 a.m. to 2:35 p.m.

Agenda: America's Demographic and Cultural Transformation: Implications for the Cancer Enterprise

Place: DoubleTree Wilmington, 700 N. King Street, Wilmington, DE 19801.

Contact Person: Abby B. Sandler, PhD, Executive Secretary, Chief, Institute Review Office, Office of the Director, 6116 Executive Blvd., Suite 220, MSC 8349, National Cancer Institute, NIH, Bethesda, MD 20892–8349, (301) 451–9399, *sandlera@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and

Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27435 Filed 11–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 4, 2009, 8 a.m. to December 4, 2009, 7 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on November 2, 2009, 74 FR 56652–56653.

The meeting will be held at The Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037. The meeting date and time remain the same. The meeting is closed to the public.

Dated: November 9, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27433 Filed 11–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: December 1–2, 2009.

Time: December 1, 2009, 9 a.m. to 5:30 p.m.; December 2, 2009, 8:30 a.m. to 4:15 p.m.

Agenda: The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols as well as related data management activities. Protocols to be reviewed include a protocol for Leber congenital amaurosis using an AAV vector, a protocol for adenosine deaminase severe combined immunodeficiency disease (ADA SCID) using a lentiviral vector and a protocol for alpha 1 antitrypsin deficiency using an AAV vector. Additional discussions include an update on a trial that used a lentiviral vector for beta-thalassemia and sickle cell disease and a discussion of proposed final changes to the *NIH Guidelines for Research Involving Recombinant DNA* to address synthetic nucleic acids. Finally, an experiment involving the introduction of tetracycline resistance into non-ocular strains of *Chlamydia trachomatis* will be discussed as required under Section III–A–1 of the *NIH Guidelines for Research Involving Recombinant DNA Molecules.* Further information on this research can be found in the October 28, 2009 **Federal Register** (74 FR 55568). An agenda for the meeting will be available on the OBA Web site (*http://oba.od.nih.gov/rdna_rac/rac_meetings.html*).

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985, 301–496–9839, *Lewallenl@od.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 9, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27485 Filed 11–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Information on Source Capture Ventilation Systems (SCVS) Units for Use in Nail Salons, Including Downdraft Vented Nail Tables and Portable SCVS

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) is conducting an evaluation of source capture ventilation systems (SCVS) units for use in nail salons, including downdraft vented nail tables and portable SCVS. This notice invites developers, manufacturers, distributors, and vendors of downdraft vented nail tables and portable nail salon SCVS that feature local exhaust recirculation to submit new, unused units for evaluation. A supply of filters sufficient to provide ventilation during 6 months of daily operation (as recommended by the developer or manufacturer), should

be submitted to the NIOSH laboratory in Cincinnati, OH, together with the table or portable SCVS.

Operational characteristics and effectiveness in reducing levels of a source point tracer gas at standard distances from the vent will be evaluated. Evaluation parameters for the units will include, but are not limited to: Airflow and capture characteristics, and noise level. A separate evaluation of filters when new and at intervals of use will also be conducted. Manufacturers, distributors, vendors and developers who wish to submit units with filters for evaluation are invited to respond to this announcement. A report on each unit submitted for evaluation, including feedback on the evaluation parameters and staff recommendations, will be sent to the submitter. Results of the evaluation will potentially be used to develop educational materials for nail technicians and may also be disseminated through reports, publications, presentations, or other media. NIOSH does not intend to identify manufacturers in its publications, but testing information referencing particular manufacturers would be releasable if requested under the Freedom of Information Act.

DATES: The deadline for receipt of downdraft vented nail table and portable SCVS unit (with filters) submissions at NIOSH is February 28, 2010. A written description of the units must be submitted prior to table shipment (see **SUPPLEMENTARY INFORMATION** below). Evaluations will begin subject to the dates submissions are received. The SCVS will be retained for up to 10 months while being evaluated, after which they will be returned.

ADDRESSES: Manufacturers, distributors, vendors, and developers who wish to submit downdraft vented nail table or portable SCVS units with filters for evaluation are invited to respond to this notice by sending a written reply to Susan Reutman, NIOSH, Robert A. Taft Laboratories, MS–C23, 4676 Columbia Parkway, Cincinnati, OH 45226 or e-mail *SReutman@cdc.gov.*

SUPPLEMENTARY INFORMATION: Please respond to Susan Reutman regarding intent to submit a unit and the written unit description, including the manufacturer, schedule of availability of the unit and filters for evaluation, and a statement of the terms under which the SCVS will be made available for evaluation, and shipment date. Shipping and handling costs (including insurance) to ship the table or portable SCVS units to NIOSH and for NIOSH to return the units to the submitter will be the responsibility of the submitter. NIOSH reserves the right to decide which submissions will be evaluated based on compliance with the specifications described above. NIOSH also reserves the right not to proceed in this manner.

Note: As a government entity, we cannot endorse any specific product directly, indirectly, or by implication. NIOSH will not be responsible for any costs related to usage, wear and tear or accidental damage to the downdraft table or portable SCVS units during transport or while they are at NIOSH. Used filters will not be returned or replaced by NIOSH.

FOR FURTHER INFORMATION CONTACT: Susan Reutman, NIOSH, Robert A. Taft Laboratories, MS–C23, 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 533–8286.

Dated: November 6, 2009.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. E9–27387 Filed 11–13–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0135]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will meet on December 3, 2009, in Washington, DC. The meeting will be open to the public.

DATES: The DHS Data Privacy and Integrity Advisory Committee will meet on Thursday, December 3, 2009, from 8:30 a.m. to 2 p.m. Please note that the meeting may end early if the Committee has completed its business.

ADDRESSES: The meeting will be held at 490 L'Enfant Plaza, SW., (L'Enfant Plaza East, Suite 3207) Washington, DC. Written materials, requests to make oral presentations, and requests to have a copy of your materials distributed to each member of the Committee prior to the meeting should be sent to Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, by November 23, 2009. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS–2009–0135) and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: PrivacyCommittee@dhs.gov.* Include the Docket Number (DHS–2009–0135) in the subject line of the message.
- *Fax:* (703) 483–2999.
- *Mail:* Martha K. Landesberg, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions must include the words ''Department of Homeland Security Data Privacy and Integrity Advisory Committee'' and the Docket Number (DHS–2009–0135). Comments will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780, by fax (703) 235–0442, or by e-mail to *PrivacyCommittee@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). During the meeting, the Chief Privacy Officer will provide the DHS Data Privacy and Integrity Advisory Committee an update on the activities of the DHS Privacy Office. The Committee will also hear reports on the DHS Privacy Office's Electronic Complaint Tracking System and on other matters related to DHS redress programs generally. In addition, the Committee's subcommittees will discuss their ongoing work. The agenda will be posted in advance of the meeting on the Committee's Web site at *http://www.dhs.gov/privacy.* Please note that the meeting may end early if all business is completed.

If you wish to attend the meeting, the DHS Privacy Office encourages you to register in advance by contacting Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, at *PrivacyCommittee@dhs.gov.* Advance registration is voluntary. The Privacy

Act Statement below explains how DHS uses the registration information you may provide and how you may access or correct information retained by DHS, if any.

At the discretion of the Chair, members of the public may make brief (*i.e.,* no more than three minutes) oral presentations from 11:45 a.m. to 12:15 p.m. If you would like to make an oral presentation at the meeting, we request that you register in advance or sign up on the day of the meeting. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. If you wish to provide written materials to be distributed to each member of the Committee in advance of the meeting, please submit them, preferably in electronic form to facilitate distribution, to Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, by November 23, 2009.

Information on Services for Individuals With Disabilities

For information on services for individuals with disabilities or to request special assistance, contact Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

Privacy Act Statement: DHS's Use of Your Information

Principal Purposes: When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS Mailing and Other Lists System of Records Notice, DHS/ALL–002 (73 FR 71659).

DHS Authority to Collect This Information: DHS requests that you voluntarily submit this information under its following authorities: 5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101; FACA, 5 U.S.C. App. (Pub. L. 92–463); 5 U.S.C., App. 2 Sec. 10; E.O. 9397; 14 U.S.C. 632; The Omnibus Budget Reconciliation Act of 1987, Public Law 101–103, Section 9503(c), 101 Stat. 1330, 1330–381 (1987) (codified at 19 U.S.C. 2071 note).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at *foia@dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL–002 System of Records Notice referenced above.

Dated: November 9, 2009.

Mary Ellen Callahan

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–27407 Filed 11–13–09; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2009–0018]

Intent To Request Renewal From OMB of One Current Public Collection of Information: Certified Cargo Screening Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652–0053, abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collections include: (1) Applications from entities that wish to become Certified Cargo Screening Facilities (CCSF) or operate as a TSA-approved validation firm; (2) personal information to allow TSA to conduct security threat assessments on key individuals employed by the CCSFs and validation firms; (3) implementation of a standard security program or submission of a proposed modified security program; (4) information on the amount of cargo screened; (5) recordkeeping requirements for CCSFs and validation firms; and (6) submission of validation reports to TSA. TSA is seeking the renewal of the ICR for the continuation of the program in order to secure passenger aircraft carrying cargo by the deadlines set out in the Implementing Recommendations of the 9/11 Commission Act of 2007.

DATES: Send your comments by January 15, 2010.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA Paperwork Reduction Act (PRA) Officer, Office of Information Technology (OIT), TSA–40, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6040.

FOR FURTHER INFORMATION CONTACT: Please e-mail *TSA.PRA@dhs.gov* with questions or comments.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0053, Certified Cargo Screening Program, 49 CFR parts 1515, 1520, 1522, 1540, 1544, 1546, 1548, and 1549. TSA is seeking renewal of an expiring collection of information. Section 1602 of the

Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53, 121 Stat. 266, 278, August 3, 2007) requires the development of a system to screen 50 percent of the cargo transported on a passenger aircraft by February 2009, and to screen 100 percent of such cargo by August 2010. In September 2009, TSA issued an interim final rule (IFR) amending 49 CFR to implement this statutory requirement. *See* 74 FR 47672 (September 16, 2009). TSA submitted an ICR to OMB for the collections of information contained in the IFR and received six months approval from OMB. TSA now seeks to extend this approval from OMB. Accordingly, TSA must proceed with this ICR for this program in order to meet the Congressional mandate. The ICR will allow TSA to collect several categories of information as explained below.

Data Collection

TSA will certify qualified facilities as CCSFs. Companies seeking to become CCSFs are required to submit an application to TSA at least 90 days before the intended date of operation. All CCSF applicants will submit applications and related information either electronically through e-mail or through the online Air Cargo Document Management System. TSA will also accept applications by postal mail. Once TSA approves the application, TSA will allow the regulated entity to operate as a CCSF in accordance with a TSA-approved security program. Prior to certification, the CCSF must also submit to an assessment by a TSA-approved validator.

TSA will also require CCSFs and validation firms to accept and implement a standard security program provided by TSA or to submit a proposed modified security program to the designated TSA official for approval.

TSA will require CCSF applicants to ensure that individuals performing screening and related functions under the IFR have successfully completed a security threat assessment (STA) conducted by TSA. In addition, Security Coordinators and their alternates for CCSFs must undergo STAs. CCSFs must submit personally identifiable information on these individuals to TSA so that TSA can conduct an STA.

CCSF facilities must provide information on the amount of cargo screened and other cargo screening metrics at an approved facility. CCSFs must also maintain screening, training, and other security-related records of compliance with the IFR and make them available for TSA inspection.

A firm interested in operating as a TSA-approved validation firm must also apply for TSA approval. Thus, this ICR also covers the following additional collections for validation firms: (1) Applications from entities seeking to become TSA-approved validation firms; (2) personal information so individuals performing, assisting or supervising validation assessments, and security coordinators can undergo STAs; (3) implementation of a standard security program provided by TSA or submission of a proposed modified security program; (4) recordkeeping requirements, including that validation firms maintain assessment reports; and (5) submission of validation reports conducted by validators in TSA-approved validation firms to TSA.

The forms used for this collection of information include the CCSF Facility Profile Application (TSA Form 419B), CCSF Principal Attestation (TSA Form 419D), Security Profile (TSA Form 419E), Security Threat Assessment Application (TSA Form 419F), TSA Approved Validation Firms Application (TSA Form 419G), Aviation Security Known Shipper Verification (TSA Form 419H), and the Cargo Reporting Template.

Estimated Burden Hours

As noted above, TSA has identified several separate information collections under this ICR. These collections will affect an estimated total of 16,989 unique respondents, including the CCSP pilot respondents, over the three years of the PRA analysis. Collectively, these information collections represent an estimated average of 723,312 responses annually, for an average annual hour burden of 718,255 hours.

1. *CCSF Application.* TSA estimates that it will receive 22,541 applications in 3 years, for an average of 7,514 applications annually and that these applications will require an average of 2 hours each to complete, resulting in an annual burden of 15,028 hours (7,514 × 2).

2. *Validation Firm Applications.* TSA estimates that it will receive 83 applications in 3 years, for an average of 28 applications annually. Each application will require an average of 30 minutes to complete, resulting in an annual burden of 14 hours (28 × 0.5) on the validation firms.

3. *STA Applications.* All CCSP participants subject to 49 CFR parts 1544, 1546, 1548, and 1549, as well as TSA-approved validation firms, will be required to have certain employees undergo security threat assessments (STAs). TSA estimates it will receive a total of 937,300 applications in 3 years, for an average of 312,433 applications annually. STA application requirements result in an annual burden of approximately 78,108 (312,433 × 0.25).

4. *Security Programs.* TSA estimates that a total 16,989 CCSFs and validation firms will be required to maintain and update their security programs. Each firm will devote approximately 4 hours each annually, beginning in the second year, updating their security programs. TSA estimates 31,589 security program updates in the first three years for an average of 10,530 updates per year. The annual hour burden is 42,119 (10,530 × 4).

5. *Recordkeeping requirements.* All CCSFs and validation firms, or 16,989, will be required to maintain records of compliance with the IFR. TSA estimates a time burden of approximately five minutes annually per employee who is required to have an STA to file training records and other records of compliance. This includes validation firm filings of validation assessment reports, resulting in a total of 937,300 record updates in the first three years for an average of 312,433 record updates per year. TSA estimates an annual burden of approximately 25,932 hours (312,433 × 0.083).

6. *Validation Assessment Reports.* TSA estimates it will take individual validators four hours to write up a validation report. In addition, TSA estimated this will result in 5,635 validations being completed annually, resulting in an annual burden of 22,541 hours. (5,635 × 4).

7. *Cargo Reporting.* TSA estimates that all CCSFs will complete monthly cargo volume reports at an estimated time of one hour per week. The average annual responses, based on one response per firm per month, are 67,624 (5,635 × 12). The estimated annual burden is 293,037 hours (5,646 × 52).

Issued in Arlington, Virginia, on November 9, 2009.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. E9–27348 Filed 11–13–09; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–19515]

Intent To Request Renewal From OMB of One Current Public Collection of Information: Air Cargo Security Requirements

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652–0040, abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collections of information that make up this ICR involve five broad categories affecting airports, passenger aircraft operators, foreign air carriers, indirect air carriers operating under a security program, and all-cargo carriers: security programs, security threat assessments (STA), known shipper data via the Known Shipper Management System (KSMS), cargo screening reporting, and evidence of compliance recordkeeping. TSA seeks continued OMB approval in order to secure passenger aircraft carrying cargo as authorized in the Aviation and Transportation Security Act, and to meet the screening requirements for cargo transported on passenger aircraft within the deadlines established in the Implementing Recommendations of the 9/11 Commission Act of 2007.

DATES: Send your comments by January 15, 2010.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA Paperwork Reduction Act (PRA) Officer, Office of Information Technology (OIT), TSA–40, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6040.

FOR FURTHER INFORMATION CONTACT: Please e-mail *TSA.PRA@dhs.gov* with questions or comments.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0040 Air Cargo Security requirements, 49 CFR parts 1540, 1542, 1544, 1546, and 1548. TSA is seeking renewal of an expiring collection of information. Congress set forth in the Aviation and Transportation Security Act (ATSA), Public Law 107–71, two specific requirements for TSA in the area of air cargo security: (1) To provide for screening of all property, including U.S. mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft; and (2) to establish a system to screen, inspect, report, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft as soon as practicable. In the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, Congress requires that 50 percent of cargo transported on passenger aircraft be screened by February 2009, and 100 percent of such cargo be screened by August 2010.

While aviation security requirements have greatly reduced the vulnerability of the air cargo system, TSA, in cooperation with industry stakeholders, identified additional gaps in the existing cargo security requirements that must be filled to reduce the likelihood of cargo tampering or unauthorized access to the aircraft with malicious intent. TSA must proceed with this ICR for this program in order to meet the Congressional mandates and current regulations (49 CFR 1542.209, 1544.205, 1546.205, and part 1548) that enable them to accept, screen, and transport air cargo. The uninterrupted collection of this information will allow TSA to continue to ensure implementation of these vital security measures for the protection of the traveling public.

Data Collection

This information collection requires the ''regulated entities,'' who may include passenger and all-cargo aircraft operators, foreign air carriers, and indirect air carriers (IACs), to implement a standard security program or to submit modifications to TSA for approval, and update such programs as necessary. The regulated entities must also collect personal information and submit such information to TSA so that TSA may conduct security threat assessments (STA) for individuals with unescorted access to cargo. This includes each individual who is a general partner, officer or director of an IAC or an applicant to be an IAC, and certain owners of an IAC or an applicant to be an IAC; and any individual who has responsibility for screening cargo under 49 CFR parts 1544, 1546, or 1548. Aircraft operators and foreign air carriers must report the volume of accepted and screened cargo transported on passenger aircraft. Further, TSA will collect identifying information for both companies and individuals whom aircraft operators, foreign air carriers, and IACs have qualified to ship cargo on passenger aircraft, also referred to as ''known shippers.'' This information is primarily collected electronically via the Known Shipper Management System (KSMS). Whenever the information cannot be entered on KSMS, the regulated entity must conduct a physical visit of the shipper using the Aviation Security Known Shipper Verification Form and subsequently enter that information into KSMS. These regulated entities must also maintain records including records pertaining to security programs, training, and compliance. The forms used in this collection of information include the Aviation Security Known Shipper Verification Form, Cargo Reporting Template, and the Security Threat Assessment Application.

Estimated Burden Hours

The hour burden associated with the initial submission of security programs is estimated by TSA to be 4 hours for each of the 152 new aircraft operator, foreign air carrier and IAC average annual regulated entites for an average annual hour burden of 606 hours.

The hour burden associated with the security program updates is estimated by TSA to be 4 hours for each of the 4,509 aircraft operators, foreign air carriers, and IACs for an average annual hour burden of 18,036 hours. TSA estimates one percent of IACs (42) will

file an appeal at 5 hours per appeal for an average annual hour burden of 210 hours.

For the STA requirement, based on a 15-minute estimate for each of the average 40,003 annual responses, TSA estimates that the average annual burden will be 10,001 hours.

For the Known Shipper Management System (KSMS), given that the IAC or aircraft operator must input a name, address, and telephone number, TSA estimates it will take 2 minutes for the 792,000 electronic submissions for a total annual burden of 26,400 hours. Also for KSMS, TSA estimates it will take one hour for the 8,000 manual submissions for a total annual burden of 8,000 hours.

TSA estimates out of the 480 total aircraft operators and foreign air carriers impacted by TSA regulations, 135 aircraft operators and foreign air carriers will submit cargo screening reporting information because not all aircraft operators and foreign air carriers transport cargo. TSA estimates this will take an estimated one hour per week (52 hours per year) for a total average annual burden of 6,994 hours. For recordkeeping, based on a 5-minute estimate for each of the 40,003 average annual responses, TSA estimates that the total average annual burden will be 3,320 hours.

Issued in Arlington, Virginia, on November 9, 2009.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. E9–27349 Filed 11–13–09; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Issuance of Final Determination Concerning Toner Cartridges and Image Drums

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of certain toner cartridges and image drums to be offered to the United States Government under an undesignated government procurement contract. Based upon the facts presented, in the final determination CBP concluded that Japan is the country of origin of the subject toner cartridges and the United States is the country of origin of the subject image drums for purposes of U.S. Government procurement.

DATES: The final determination was issued on November 9, 2009. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–325–0041).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on November 9, 2009, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain toner cartridges and image drums to be offered to the United States Government under an undesignated government procurement contract. This final determination, in HQ W563548, was issued at the request of Oki Data Americas, Inc. under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18).

The final determination concluded that, based upon the facts presented, the replacement in the United States of minor components of U.S. and foreign origin and the addition of Japanese-origin toner to a Chinese-origin toner cartridge do not substantially transform the toner cartridge into a product of the United States. Therefore, the last country in which the toner cartridge undergoes a substantial transformation is based on the essential character of the toner cartridge, which is the toner from Japan. Based upon the facts presented, the final determination also concluded that the disassembly in the United States of a Thai-origin image drum, the cleaning and reassembly of salvageable parts, and the replacement of a significant number of parts essential to the functionality of the image drum result in a substantial transformation of the components into a product of the United States.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register.**

Dated: November 9, 2009.

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

Attachment

HQ W563548

November 9, 2009

MAR–2–05 RR:CTF:VS W563548 KSG

CATEGORY: Marking

Mr. Stephen E. Becker
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.,
Washington, DC 20037–1122

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, Customs and Border Protection Regulations (19 CFR § 177); Final Determination; country of origin of remanufactured toner cartridges and image drums

Dear Mr. Becker:

This is in response to your letter dated July 28, 2006, requesting a final determination on behalf of Oki Data Americas, Inc. (''Oki Data''), pursuant to subpart B of Part 177, Customs Regulations (19 C.F.R. § 177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), U.S. Customs and Border Protection (''CBP'') issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain remanufactured toner cartridges and image drums. We note that Oki Data is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination. In issuing this final determination, we have given consideration to the arguments presented during a meeting at our offices on November 17, 2006, and your additional submissions dated September 12, 2006, September 28, 2006, November 17, 2006, and November 30, 2006, which include photographs of the articles at various stages of the processes performed.

FACTS:

I. *Toner Cartridges*

You advise us that Oki Data will remanufacture C7300/7500 Series toner cartridges at its facility in Mount Laurel, New Jersey. You state that the spent toner cartridges were originally manufactured in China and that the toner cartridges were used in printers in the United States. You also indicate that the actual cartridges lack any notation of their origin.

You advise that the toner cartridge is comprised of 52 parts plus toner. The remanufactured cartridge will consist of 20 newly manufactured parts: 14 from the

United States, 1 from the United Kingdom, and 5 from China. Such parts include, among others, the stopper film, the toner cap, the lever stopper, the left and right lockout plates, and, if damaged, the foam seal cap, and seal sponge. In addition, the remanufactured cartridges will be filled with new toner of Japanese origin, which you advise is the most valuable component of the remanufactured cartridge. Thirty-two parts will be salvaged from the used cartridges and reused in the remanufactured toner cartridge.

When the depleted cartridges arrive at the facility in New Jersey, they are inspected for salvage. Acceptable cartridges will undergo the following key remanufacturing operations: (1) the exterior of the cartridge is vacuumed; (2) the seal tape, lever stopper, and remaining toner are removed; (3) the left side plate and spiral rod are removed and cleaned; (4) if necessary, the foam seal cap and seal sponge are replaced; (5) the cartridge interior is vacuumed and cleaned; (6) the stopper film is removed from the inner shutter and replaced with a new stopper film; (7) the inner shutter is reassembled; (8) the toner cap is removed; (9) the mixing bar and spiral rod are reinserted; (10) the left side plate is reassembled, and the technician verifies that the mixing bar and spiral rod engage with the mixing boss of the left side plate; (11) the partition film is reset; (12) seal tape is applied to the cartridge; (13) new toner is added to the cartridge; (14) a new toner cap and new lever stopper are installed; (15) the cartridge exterior is vacuumed and cleaned; (16) the cartridge is inspected for leakage; (17) a bar code is printed and applied to the cartridge; (18) the cartridge and light-emitting diode (''LED'') lens cleaner are placed into a black poly bag, which is then heat sealed; (19) the bagged cartridge is placed in a box, and a duplicate bar code label is applied to the box; and (20) in some instances, four boxed cartridges are inserted into labeled four-pack boxes, which are placed on pallets.

II. Image Drums

Oki Data will remanufacture the C7300/C7500 Series image drums at its facility in Mount Laurel, New Jersey. You state that the used image drums originally were manufactured in Thailand and that the image drums were used in printers in the United States. You also indicate that the actual image drums lack any notation of their origin.

You advise that the image drum is comprised of 110 component parts. Of this number, 56 parts will be newly manufactured in various countries: 12 in the United States, 1 in Canada, 5 in Japan, and 38 in Thailand. Several of the newly manufactured parts that will replace the worn parts of the used image drum are significant to the functionality of the product and include, among others, the organic photoreceptor drum (''OPC''), the developing roller, the charge roller, and the cleaning blade. All of these parts and the new lubricating toner powder originate in Japan. You state that the OPC drum is the most valuable component of the image drum. Fifty-four parts will be salvaged from the used image drums.

When the used image drums arrive at the New Jersey facility, their revision levels and previous remanufacturing statuses are verified. Acceptable image drums undergo the following key remanufacturing operations: (1) the top cover of the image drum is removed and cleaned; (2) the developer blade assembly is removed and the blade is discarded; (3) the left side plate is removed to expose the OPC drum, the cleaning blade, and the charge, developer, and sponge rollers; (4) the charge roller is removed and discarded; (5) the right side plate is removed; (6) the developer roller and gear are removed and discarded; (7) the toner powder is removed from the sponge roller assembly; (8) the OPC drum is removed and discarded; (9) the roller sponge assembly is removed, the mixing bar and plastic plates are saved, and the roller sponge, six gears, the sponge seals, felt sponges, and sub-sponge roller are discarded; (10) the cleaning blade assembly is removed and discarded; (11) the spring spiral is removed from the frame base; (12) the disassembled parts are cleaned; (13) the left side plate is reassembled using a new gear belt, belt toner, spiral part, e-ring, and new gear idles and electrical contacts (certain revision levels will receive a new left side plate and frame base); (14) a new cleaning blade and cleaning gear are installed into the frame base; (15) a new roller sponge, new sponge seals and felt sponges, and the salvaged mixing bar and plastic plates are used to assemble a new roller sponge assembly, which is then attached to the frame base; (16) a new OPC drum, roller developer, and fuse assembly are installed into the frame base; (17) the right side plate is reattached to the frame base; (18) a new charge roller is installed in the right side plate assembly; (19) the left side plate assembly is attached to the frame base; (20) a new blade developer is installed into the frame base assembly; (21) new toner is added to the toner hopper of the blade developer; (22) the top cover is reattached to the frame base; (23) the image drum's print quality is tested; (24) the image drum is wrapped in two types of protective sheeting and a new toner cover is installed; (25) a serial number label and date code label are applied to the image drum; (26) the image drum is placed into a black bag and packed into a labeled box, along with the warranty sheet, ecology sheet, and shipping label; and (27) three single-pack boxes are placed into a labeled overpack box, which is loaded onto a pallet. Essentially, the spent image drum is almost completely disassembled, and the new parts mentioned above are used to construct a functioning image drum.

ISSUE:

What are the countries of origin of the remanufactured toner cartridges and image drums for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.,* which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C.§ 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 C.F.R. 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens* v. *United States,* 6 Ct. Int'l Trade 204, 573 F. Supp. 1149 (1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one which leaves the identity of the imported articles intact, a substantial transformation has not occurred. *Uniroyal Inc.* v. *United States,* 3 Ct. Int'l Trade 220, 542 F. Supp. 1026 (1982). In *Uniroyal,* a country of origin marking case, the court considered whether the addition of outsoles in the United States to imported shoe uppers from Indonesia effected a substantial transformation of the uppers. In finding that the upper was the ''very essence'' of the completed shoe, the court held that a substantial transformation of the uppers did not occur, as the attachment of the outsoles to the uppers was a minor manufacturing or combining process that left the identity of the uppers intact. Hence, the uppers were required to be marked with Indonesia as their country of origin.

I. Disassembly and Remanufacturing Operations

CBP has examined disassembly and remanufacture of articles under a variety of circumstances. In some instances, CBP has found a substantial transformation to occur when articles are disassembled and used in the assembly of articles. In HRL 734213, dated February 20, 1992, CBP held that the disassembly of an imported computer monitor and the installation of a U.S. touchscreen constituted a substantial transformation of the monitor for marking purposes. In New York Ruling Letter (''NY'') 183759, dated June 28, 2002, CBP found that fuel tank assemblies disassembled from completed motor vehicles in Germany and imported into the United States were substantially transformed when the assemblies and the motor vehicle bodies were assembled into completed motor vehicles and sold in the United States. *See also* HRL 561322, dated May 11, 1999 (an aircraft fuselage, imported disassembled, was substantially transformed into a product of the United States when it was reassembled and combined with engines, avionics, and landing gear to make a completed aircraft). In NY G87305, dated March 12, 2001, CBP found that two laser printer cartridge models,

originally manufactured in either China or Japan were to be marked as products of China as a result of remanufacturing operations performed in that country. CBP noted that these models were not simple toner cartridges, but models containing both development units and cleaning units. During the remanufacturing process, the cartridges were disassembled into over 30 individual parts or subassemblies, inspected, cleaned and reconditioned, and sorted by type into bins. The essential identity of the used cartridges was not maintained. Then, each cartridge received a new OPC drum, new toner, and a special foam part unique to the remanufacturing process, as well as other new components. In addition, a special seal assembly, a part also unique to the remanufacturing process, was added to some models. CBP found that significant value was added to the remanufactured laser printer cartridges and accounted for most of the cost of the finished cartridges.

In some instances, CBP has not found a substantial transformation when non-functioning articles were disassembled and returned to their functionality. In HRL 559740, dated October 3, 1996, CBP determined that failed power transformers shipped to Brazil for repair did not qualify for treatment under the GSP, as they did not undergo a substantial transformation. The repair operations consisted of the disassembly of the failed core/coil assembly, the reuse of the core, if possible, the replacement and/or repair of parts, and the mounting of the repaired core assembly into the old tank shell. However, as the essential identity of the transformers was retained throughout the operations, CBP found that the transformers qualified for treatment under subheading 9802.00.50, HTSUS. *See also,* HRL 555313, dated June 19, 1990 (a substantial transformation did not occur when non-functional air conditioning compressors were exported to Mexico for disassembly, reconditioning, and reassembly with new parts into functional compressors; but, the repaired compressors were not eligible for subheading 9802.00.50, HTSUS, treatment as their component parts were separated without regard to maintaining the integrity of the original units); and HRL 557991, dated October 17, 1994, (used photocopier drum cartridges were eligible for subheading 9802.00.50, HTSUS, treatment, as replacing new corona wires, new photoreceptor drums, new cleaning blades, and new mylar sealing tape did not destroy the essential identity of the exported cartridges).

You also cite HRL 561412, dated January 31, 2000, which examined the NAFTA marking requirements for remanufactured toner cartridges, in support of your position that the toner cartridges and image drums are substantially transformed in the United States. In that case, spent toner cartridges were completely disassembled in Canada and no effort was made to preserve the essential identity of the spent cartridges. During the remanufacturing process, the photoreceptor drum was discarded in nearly 100 percent of all cases and other key components, which contributed to the functionality of the cartridges, such as magnetic rollers, corona wires, and cleaning blades, were discarded in almost every case. CBP only looked to the used toner cartridge as the ''foreign material'' that did not undergo the requisite tariff shift. Applying the hierarchy of the NAFTA Marking Rules, CBP found that the used toner cartridge was the material that imparted the essential character of the good, but because of the lack of reliable data as to the origin of the toner cartridge, the origin was determined under 19 CFR 102.11(d) as the last country in which the cartridges underwent production. We note that pursuant to 19 U.S.C. 1625(c)(1), HRL 561412 and HRL 560768 dated May 26, 1998 (another ruling concerning the origin of remanufactured cartridges), were revoked to allow consideration to not only the used cartridge as a ''foreign material,'' but to new parts incorporated into the remanufactured cartridge in determining the origin of the remanufactured cartridge. Accordingly, in H012926 dated March 31, 2009, CBP took into consideration the used cartridges and the new component parts in the remanufactured cartridges. As no one single material imported the essential character to the remanufactured cartridge, the origin was determined to be the last country in which the remanufactured cartridge underwent production, pursuant to 19 CFR 102.11(d)(3).

You also claim that in light of the recent new free trade agreements concerning recovered and remanufactured goods, that the toner cartridges and image drums should be considered to be substantially transformed in the U.S.

II. Toner Cartridges

In the instant case, parts from the toner cartridge are removed and inspected, and salvageable parts are cleaned for reassembly. The toner appears to be the only significant component replaced during the remanufacturing operation. Other components having a mechanical function such as the shutters, mixing gear, mixing bar, and spiral attachment are not replaced. These operations are not as significant as the operations described in NY G87305, where the cartridges were completely disassembled, salvageable parts were sorted into bins, cleaned and reconditioned, major components of the cartridges, including the OPC drum and toner were replaced, and other new components, unique to the remanufactured product, were added. Moreover, the operations are not as extensive as the repair operations described in HRL 557991, where the replacement of the photoreceptor drum, cleaning blade, corona wire, and mylar sealing tape did not destroy the identity of the article and was deemed to be not so extensive as to create a new or different article.

In contrast to the operations performed on the imported fuselage in HRL 561322, the subject cartridges essentially are in their finished form at the beginning of the remanufacturing process. To restore their functionality, the toner is recharged, minor components are replaced, salvageable parts are cleaned, and the restored cartridge is tested. These operations are significantly less substantial than the operations described in HRL 561322, where the imported fuselage was an empty shell that needed several essential components added to it before it could function as an aircraft.

As such, the described remanufacturing operations do not substantially transform the used toner cartridge into a product of the United States. In considering the last country in which the toner cartridge underwent a substantial transformation, we believe that the new, imported toner imparts the essential character of the remanufactured toner cartridge. You also state that the toner, by far, is the most valuable component of the remanufactured cartridge. Therefore, we find that the remanufactured toner cartridge is a product of Japan for purposes of U.S. Government procurement.

III. Image Drums

In contrast to the remanufacturing of the subject toner cartridges, the remanufacturing operations for the image drums involve the assembly of numerous new parts that are essential to the functionality of the image drum. The image drums require the replacement of the OPC drum, charge roller, roller sponge, developer roller, cleaning blade, developer blade, fuse, electrical contacts, and gears, as well as many other parts. The toner also must be replenished. It appears that most of the components that contribute to the functionality of the image drum will be removed from the used image drum at the remanufacturing facility in New Jersey and replaced with new parts. In essence, the housing of the image drum and other minor components are being reused in the remanufacture of the image drum, but the majority of the parts that impart the functionality of the image drum are new components. This scenario is similar to the imported fuselage, or empty aircraft shell, described in HRL 561322, *supra,* where the addition of an interior, two engines, avionics, and landing gear was necessary to transform the product into a functioning aircraft. Moreover, in the instant case, depending upon the revision level of the used image drum, the remanufacturing process also may require the replacement of the frame base and side plates.

These operations appear to be significantly more extensive than the operations described in NY G87305, *supra,* where CBP found that used cartridges receiving new OPC drums, new toner, special parts unique to the remanufacturing process, and other new components were substantially transformed into products of China. Moreover, they involve the replacement of many more parts that are essential to the functionality of the image drum than the repair operations described in HRL 557991, *supra.*

Thus, based on the facts provided, we believe that the disassembly of the used toner cartridge, the cleaning and reassembly of salvageable parts, and the replacement of a significant number of parts essential to the functionality of the drum are sufficient to substantially transform the non-functioning used image drum into a product of the United States. We also note that the remanufacturing operations for the image drum are complex, require technical skill, and add significant value to the image drums.

HOLDING:

Based upon the specific facts of this case, we find that the toner cartridges are not

substantially transformed as a result of the described remanufacturing operations performed in the United States. The country of origin of the remanufactured toner cartridges for purposes of U.S. Government procurement is Japan.

We find that the image drums are substantially transformed into products of the United States when they undergo the described remanufacturing operations in the United States. Therefore, the country of origin of the remanufactured image drums is the United States.

Notice of this final determination will be given in the **Federal Register** as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,
Sandra L. Bell,
Executive Director, Office of Regulations and Rulings, Office of International Trade.

[FR Doc. E9–27350 Filed 11–13–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5312–N–02]

Recovery Act—Green Retrofit Program for Multifamily Housing, Notice of Closing of Application Solicitation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: By notice issued May 13, 2009, HUD announced the availability of funding for the Green Retrofit Program for Multifamily Housing (GRP), a program authorized by the American Recovery and Reinvestment Act of 2009, for the purpose of making, primarily, loans and grants to facilitate utility-saving retrofits and other retrofits that produce environmental benefits in certain existing HUD-assisted multifamily housing. In the May 13, 2009, notice, HUD announced that it would begin soliciting applications beginning on June 15, 2009. This notice announces that, based on the funds remaining available, HUD will cease accepting applications as of November 18, 2009.

FOR FURTHER INFORMATION CONTACT: Office of Affordable Housing Preservation, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6230, Washington, DC 20410–8000; telephone number 202–708–0001 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLMENTARY INFORMATION:

I. Background

Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) authorizes funding for GRP, a Recovery Act program by which HUD makes loans and grants and takes a variety of other actions to facilitate utility-saving retrofits and other retrofits that produce environmental benefits, in certain existing HUD-assisted multifamily housing. The funding provided for retrofits is designed to result in property that reduces energy demand, costs less to operate, improves the residents' quality of life, and reduces its impact on the environment.

By notice issued May 13, 2009, HUD announced the availability of funding GRP. (See *http://www.hud.gov/offices/adm/hudclips/notices/hsg/files/09–02HSGN.pdf*). In the May 13, 2009, notice, HUD announced that GRP would be administered by the Office of Affordable Housing Preservation. In the May 13, 2009, notice, HUD also announced that it would begin accepting applications for GRP funding on June 15, 2009, on a first come, first serve basis, and would continue to accept applications subject to the availability of funding.

In this notice, HUD announces that, based on remaining GRP funds available, HUD will cease accepting applications as of November 18, 2009.

Dated: November 9, 2009.

Theodore K. Toon,

Deputy Assistant Secretary for Affordable Housing Preservation.

[FR Doc. E9–27416 Filed 11–13–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5321–C–03]

Notice of Fund Availability (NOFA) for Fiscal Year 2009 Neighborhood Stabilization Program 2 Under the American Recovery and Reinvestment Act of 2009; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: On May 4, 2009, HUD posted its NSP2 NOFA at *http://www.hud.gov/nsp* and announced the availability of the NOFA on May 7, 2009 (74 FR 21377). The NSP2 NOFA announced the availability of approximately $1.93 billion available in competitive grants authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, approved February 17, 2009). The NSP2 NOFA was corrected by Notice posted on the HUD website and announced on June 11, 2009 (74 FR 28715). Today's **Federal Register** publication announces that HUD has posted a notice making further corrections to the NSP2 NOFA. Specifically, the Notice (1) corrects an inconsistency in the NSP2 NOFA regarding when the lead member of a consortium must enter into consortium funding agreements with consortium members; and (2) extends the deadline for submitting such agreements to HUD to January 29, 2010. This notice only affects applications for funding that have already been submitted to HUD by consortium applicants. HUD notes that the deadline for applications was July 17, 2009, and, as a result, will not accept new applications for funding. The notice correcting the NSP2 NOFA is available on the HUD Web site at *http://www.hud.gov/recovery.*

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Gimont at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

Dated: November 9, 2009.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. E9–27414 Filed 11–13–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activities; Proposals, Submissions, and Approvals

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of an extension of an information collection (1028–0090).

SUMMARY: The U.S. Geological Survey is requesting renewal of an existing information collection that received emergency clearance on August 8, 2009. We will ask the Office of Management and Budget (OMB) to approve the information collections (IC) described below. As required by the Paperwork Reduction Act of 1995 (PRA) and as part of our continued effort to reduce paperwork and respondent burden, we invite the general public and other federal agencies to take this opportunity to comment on this IC. 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: You must submit comments on or before January 15, 2010.

ADDRESSES: Send your comments on this information collection directly to Phadrea Ponds, Information Collections Clearance Officer, U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or FAX: *pponds@usgs.gov* (e-mail). Use Information Collection Number 1028–0051 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information please contact William C. Burton at (703) 648–6904 or by mail at U.S. Geological Survey, 926A National Center, Sunrise Valley Drive, Reston, VA 20192.

SUPPLEMENTARY INFORMATION:

I. Abstract

During FY09 and FY10, the Volcano Hazards Program (VHP) will provide funding under the American Recovery and Reinvestment Act (ARRA) for improvement of the volcano and other monitoring systems and other monitoring-related activities that contribute to mitigation of volcano hazards. This notice concerns the collection of information that is sufficient and relevant to evaluate and select proposals for funding under the VHP. We will accept proposals from State geological surveys and academic institutions requesting funds to assist in the monitoring of active volcanoes and to conduct volcano-related research. Financial assistance will be awarded on a competitive basis following the evaluation and ranking of State and academic proposals. VHP proposals will be reviewed by a peer panel of six (6) members. Five (5) members will be Department of the Interior representatives; and one (1) member will be an external representative. To submit a proposal, you must follow the written guideline (that will be made available at *http://www.Grants.gov*) and complete a project narrative. The application must be submitted via Grants.gov. Grant recipients must complete a final technical report at the end of the project period. Narrative and report guidance is available through *http://volcanoes.usgs.gov/* and at *http://www.Grants.gov.*

II. Data

OMB Control Number: 1028–0090.

Title: Volcano Hazards Program (VHP).

Type of Request: Extension of currently approved collection.

Respondent Obligation: Required to receive benefits.

Frequency of Collection: Annually.

Description of Respondents: State Geological Surveys and academic institutions.

Estimated Number of Annual Responses: 20 applications and 12 final reports.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 796 hours. We expect to receive approximately 20 applications. It will take each applicant approximately 35 hours to complete the narrative and present supporting documents. This includes the time for project conception and development, proposal writing, reviewing, and submitting the proposal application through Grants.gov (totaling 700 burden hours). We anticipate awarding 12 grants per year. The award recipients must submit a final report at the end of the project. We estimate that it will take approximately 8 hours to complete the requirement for that report (totaling 96 hours).

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

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. 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. To comply with the public process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60 day public comment period.

Dated: November 5, 2009.

Suzette Kimball,

Associate Director for Geology.

[FR Doc. E9–27421 Filed 11–13–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activity

AGENCY: United States Geological Survey (USGS).

ACTION: Notice of a new information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) a new information collection request (ICR) for approval of the paperwork requirements for the National Institutes for Water Resources (NIWR)–USGS competitive grant program conducted in conjunction with the State Water Resources Research Institutes.

DATES: You must submit comments on or before December 16, 2009.

ADDRESSES: Please submit comments on this information collection directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via e-mail [*OIRA_DOCKET@omb.eop.gov*] or fax (202) 395–5806; and identify your submission as 1028–NEW (NIWR). Please also submit a copy of your comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, NIWR in the subject line.

FOR FURTHER INFORMATION CONTACT: John E. Schefter, Chief Office of External Research, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 424, Reston, Virginia 20192 (mail) at (703) 648–6800 (Phone); or *schefter@usgs.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Abstract

The NIWR–USGS National Competitive Grant Program issues an annual call for proposals to support research on water problems and issues of a regional or interstate nature beyond those of concern only to a single state and which relate to specific program priorities identified jointly by the USGS and the state water resources research institutes authorized by the Water Resources Research Act of 1984, as amended (42 U.S.C. 10301 *et seq.*). Any investigator at an accredited institution of higher learning in the United States is eligible to apply for a grant through a water research institute or center established under the provisions of the Act. Proposals involving substantial collaboration between the USGS and university scientists are encouraged. Proposals may be for projects of 1 to 3 years in duration and may request up to $250,000 in federal funds. Successful applicants must match each dollar of the federal grant with one dollar from nonfederal sources. This program is authorized by the Water Resources Research Act of 1984, as amended (42 U.S.C. 10303(g)). The membership of the National Institutes for Water Resources consists solely of the State Water Resources Research Institutes. NIWR cooperates with the USGS in the identification of the research priorities and the solicitation and review of the proposals submitted to the NIWR–USGS National Competitive Grant Program.

II. Data

OMB Control Number: 1028–NEW.

Title: NIWR–USGS National Competitive Grant Program.

Respondent Obligation: Voluntary, necessary to obtain benefits.

Frequency of Collection: Annually.

Description of Respondents: Eligible applicants to this program are restricted to the 54 land grant universities housing the state water resources research institutes.

Estimated Number of Annual Responses: 72. We expect to receive approximately 65 applications and award 7 grants per year.

Annual Burden Hours: 3,984 hours. We expect to receive approximately 65 applications. It will take each applicant approximately 60 hours to complete the narrative and supporting documents. This includes the time for project conception and development, proposal writing, reviewing, and submitting the proposal application through Grants.gov (totaling 3,900 burden hours). We anticipate awarding 7 grants per year. The award recipients must submit a final report at the end of the project. We estimate that it will take approximately 12 hours to complete the requirement for that report (totaling 84 hours).

Annual Reporting and Recordkeeping ''Non-Hour Cost'': We have not identified any ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

On October 7, 2008, we published a **Federal Register** notice (73 FR 51645) announcing that we would submit this information collection to OMB for approval. The notice provided a 60-day comment period ending on December 7, 2008. We did not receive any comments in response to that notice.

We again invite comments concerning this ICR on: (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) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 9, 2009.

John E. Schefter,

Water Resources Research Act Program Coordinator.

[FR Doc. E9–27422 Filed 11–13–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Notice of Sale (NOS) for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 213 in the Central Planning Area (CPA) in the Gulf of Mexico (GOM)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the proposed NOS for proposed Sale 213.

SUMMARY: The MMS announces the availability of the proposed NOS for proposed Sale 213 in the CPA. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected states the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 213 are due from the affected states within 60 days following their receipt of the proposed Notice. The final NOS will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 17, 2010.

Please address any comments or questions related to the proposed changes to the lease terms as presented below to Dr. Marshall Rose, MMS, Chief, Economics Division, at (703) 787–1536 or *marshall.rose@mms.gov* within 30 days.

SUPPLEMENTARY INFORMATION: The MMS will use the recently revised Form MMS–2005 (October 2009) to convey leases. The form is available on the Internet at *http://www.gomr.mms.gov/homepg/mmsforms/FormMMS-2005.pdf*.

The proposed NOS for Sale 213 and a ''Proposed Notice of Sale Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone: (504) 736–2519.

The MMS is accepting comments on the proposed revisions of the initial lease terms for blocks in water depths of 400 to less than 800 meters and 800 meters to less than 1600 meters. The proposed 5+3 term in 400 to less than 800 meters supersedes and replaces the previous 8-year lease term provisions for these water depths as provided by regulations at 30 CFR 256.37(a)(3) where commencement of an exploratory well is required within the first 5 years of the initial 8-year term to avoid lease cancellation. The 10-year initial lease term in 800 to less than 1600 meters is proposed to be changed to a 7-year initial lease term (commencement of an exploratory well within the initial

primary lease term would extend the lease term to 10 years). Please address any comments or questions related to this matter to Dr. Marshall Rose, MMS, Chief, Economics Division, at (703) 787–1536 or *marshall.rose@mms.gov* within 30 days.

Dated: *October 30, 2009.*

S. Elizabeth Birnbaum,

Director, Minerals Management Service.

[FR Doc. E9–27489 Filed 11–13–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Gulf of Mexico, Outer Continental Shelf, Central Planning Area, Oil and Gas Lease Sale 213 (2010) Environmental Assessment

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.,* that MMS has prepared an environmental assessment (EA) for proposed Outer Continental Shelf (OCS) oil and gas Lease Sale 213 in the Central Gulf of Mexico (GOM) Planning Area (Lease Sale 213) scheduled for March 2010. The preparation of this EA is an important step in the decision process for Lease Sale 213. The proposal for Lease Sale 213 was identified by the Call for Information and Nominations published in the **Federal Register** on October 9, 2008, and was analyzed in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2007–2012; Western Planning Area Sales 204, 207, 210, 215, and 218; Central Planning Area Sales 205, 206, 208, 213, 216, and 222—Final Environmental Impact Statement; Volumes I and II* (Multisale EIS, OCS EIS/EA MMS 2007–018), and in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2009–2012; Central Planning Area Sales 208, 213, 216, and 222; Western Planning Area Sales 210, 215, and 218—Final Supplemental Environmental Impact Statement* (Supplemental EIS, OCS EIS/EA MMS 2008–041).

This EA for proposed Lease Sale 213 analyzed the potential environmental effects of the proposed lease sale and its alternatives (excluding the unleased blocks near biologically sensitive topographic features; excluding the unleased blocks within 15 miles of the Baldwin County, Alabama, coast; and no action) based on any new information regarding potential impacts and issues that were not available at the time the Supplemental EIS was prepared. This EA for proposed Lease Sale 213 also examined the potential environmental effects of the addition of two small areas within the Central Planning Area (CPA), located greater than 100 miles from the coasts of Alabama and Florida, that were not previously examined by the Supplemental EIS (OCS EIS/EA MMS 2008–041) or Multisale EIS (OCS EIS/EA MMS 2007–018) but that were included in the *OCS Oil and Gas Leasing Program: 2007–2012* (5-Year Program).

No new significant impacts were identified for proposed Lease Sale 213 that were not already assessed in the Multisale EIS or Supplemental EIS. As a result, MMS determined that an additional Supplemental EIS is not required and prepared a Finding of No New Significant Impact (FONNSI).

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Baird, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, MS 5410, New Orleans, Louisiana 70123–2394. You may also contact Mr. Baird by telephone at (504) 731–1489.

SUPPLEMENTARY INFORMATION: In April 2007, MMS published a Multisale EIS that addressed 11 proposed Federal actions that would offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and its projected activities are very similar each year for each planning area, a single EIS was prepared for the 11 Western Planning Area (WPA) and CPA lease sales scheduled in the proposed 5–Year Program. The Multisale EIS (OCS EIS/EA MMS 2007–018) addressed WPA Sale 204 in 2007, Sale 207 in 2008, Sale 210 in 2009, Sale 215 in 2010, and Sale 218 in 2011; and CPA Sale 205 in 2007, Sale 206 in 2008, Sale 208 in 2009, Sale 213 in 2010, Sale 216 in 2011, and Sale 222 in 2012. However, the Gulf of Mexico Energy Security Act of 2006 repealed the Congressional moratorium on approximately 5.8 million acres located in the southeastern part of the CPA. Therefore, it was necessary to prepare additional NEPA documentation to address the MMS proposal to expand the CPA by the 5.8 million acre area. A Supplemental EIS was prepared for the remaining seven CPA and WPA lease sales scheduled in the 5-Year Program. In September 2008, MMS published a Supplemental EIS (OCS EIS/EA MMS 2008–041) that addressed seven proposed Federal actions that would offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. An additional NEPA review (an EA) was conducted for proposed Lease Sale 213 to address any new information relevant to the proposed lease sale. Additional NEPA reviews will also be conducted prior to decisions on each of the four subsequent proposed lease sales. The purpose of these EAs is to determine whether to prepare a FONNSI or a Supplemental EIS. For each proposed lease sale, MMS prepares a Consistency Determination (CD) to determine whether the lease sale is consistent with each affected state's federally approved, coastal zone management program. Finally, MMS solicits comments via the Proposed Notice of Sale (NOS) from the governors of the affected states on the size, timing, and location of the lease sale. The tentative schedule for the prelease decision process for Lease Sale 213 is as follows: CDs sent to affected states, October 2009; Proposed NOS sent to governors of the affected states, November 2009; Final NOS published in the **Federal Register**, February 2010; and Lease Sale 213, March 2010.

Public Comments: Within 30 days of this Notice's publication, interested parties are requested to send comments on this EA/FONNSI. Comments may be submitted in one of the following two ways:

1. In written form enclosed in an envelope labeled ''Comments on CPA Lease Sale 213 EA'' and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

2. Electronically to the MMS e-mail address: *environment@mms.gov*.

All comments received will be considered in the decisionmaking process for proposed Lease Sale 213.

EA Availablity: To obtain a copy of this EA, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view this EA on the MMS Web site at *http://www.gomr.mms.gov/homepg/regulate/environ/nepa/nepaprocess.html.*

Dated: October 30, 2009.

Chris C. Oynes,

Associate Director for Offshore Energy and Minerals Management.

[FR Doc. E9–27488 Filed 11–13–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2009–N247]
[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 16, 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: Ricardo E. Longoria, Encinal, TX, PRT-192403

The applicant request renewal and amendment of his permit authorizing take, interstate and foreign commerce to include Elds deer (*Recurvus eldii*), red lechwe (*Kobus leche*) and Arabian oryx (*Oryx leucoryx*) from his captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a 5–year period.

Applicant: Pauline L. Kamath, University of California at Berkeley, Berkeley, CA, PRT-218825

The applicant requests a permit to import biological samples from Black rhinoceros (*Diceros bicornis*) from Etosha Ecological Institute, Okaukuejo, Namibia, for the purpose of scientific research. This notification covers activities conducted by the applicant over a 5–year period.

Applicant: Molly M. Hedgecock, High Point, NC, PRT-220671

The applicant requests a permit to import the sport-hunted trophy of one leopard (*Panthera pardus*) taken from the wild in the Central African Republic, for the purpose of enhancement of the survival of the species.

Applicant: Brooks J. Puckett, Plano, TX, PRT-226347

The applicant requests a permit to import the sport-hunted trophy of one male black-footed cat (*Felis nigripes*) taken from the wild in the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: David K. Reinke, Crawford, CO, PRT-229051

The applicant requests a permit to import the sport-hunted trophy of one male black Rhinoceros (*Diceros bicornis*) taken from the wild in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: National Zoological Park, Smithsonian Institution, Washington, D.C., PRT-231152

The applicant requests a permit to export one male and one female captive-born Clouded leopard (*Neofelis nebulosa*) to Howletts Wild Animal Park, United Kingdom, for the purpose of enhancement of the survival of the species.

Applicant: Seneca Park Zoo, Rochester, NY, PRT-231594

The applicant requests a permit to export one male bred-in-captivity Brazilian ocelot (*Leopardus pardalis mitis*) to the Granby Zoo, Quebec, Canada, for the purpose of enhancement of the survival of the species.

The following applicants each request a permit to import the sport-hunted trophy of one male scimitar-horned oryx (*Oryx dammah*) culled from a captive herd in the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Wilson W. Crook III, Kingwood, TX, PRT-223349

Applicant: Jorge L. Medina, Hawthorne, CA, PRT-228690

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Edward D. Pylman, Byron Center, MI, PRT-230602

Applicant: Robert B. Spencer, Gilmer, TX, PRT-231522

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). 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: David E. Clapham, M.D., Ph.D, Department of Cardiology, Children's Hospital Boston, MA, PRT-227386

The applicant requests a permit to import tissue samples and biological specimens created from tissue samples collected from wild polar bears (*Ursus maritimus*) for the purpose of scientific research.

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: November 6, 2009.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority

[FR Doc. E9–27362 Filed 11–13–09; 8:45 am]

BILLING CODE 4310–55–S

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–472 and 731–TA–1171–1172 (Preliminary)]

Certain Standard Steel Fasteners From China and Taiwan; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from China and Taiwan of certain standard steel fasteners (''CSSF''), provided for in subheadings 7318.15.20, 7318.15.80, and 7318.16.00 of the Harmonized Tariff Schedule of the United States. CSSF imported from China are alleged to be subsidized and sold in the United States at less than fair value (LTFV). CSSF imported from Taiwan are alleged to be sold in the United States at LTFV.

Background

On September 23, 2009, petitions were filed with the Commission and Commerce by Nucor Fastener Division, St. Joe, Indiana, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV and subsidized imports of CSSF from China and LTFV imports of CSSF from Taiwan. Accordingly, effective September 23, 2009, the Commission instituted countervailing duty investigation No. 701–TA–472 and antidumping duty investigations Nos. 731–TA–1171–1172 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 29, 2009 (74 FR 49889). The conference was held in Washington, DC, on October 14, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 9, 2009. The views of the Commission are contained in USITC Publication 4109 (November 2009), entitled Certain Standard Steel Fasteners from China and Taiwan: Investigation Nos. 701–TA–472 and 731–TA–1171–1172 (Preliminary).

By order of the Commission.

Issued: November 9, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–27375 Filed 11–13–09; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–634]

In the Matter of Certain Liquid Crystal Display Modules, Products Containing Same, and Methods Using the Same; Final Commission Determination of Violation; Issuance of a Limited Exclusion Order and Cease and Desist Orders; and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation with a finding of violation of section 337, and has issued a limited exclusion order directed against products of respondents Samsung Electronics Co., Ltd. of Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Semiconductor, Inc. of San Jose, California; and has issued cease and desist orders against Samsung Electronics America, Inc. and Samsung Semiconductor, Inc.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 4, 2008, based on a complaint filed by Sharp Corporation (''Sharp'') of Japan. 73 FR 11678. The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain liquid crystal display devices, products containing same, and methods for using the same by reason of infringement of certain claims of U.S. Patent Nos. 6,879,364 (''the '364 patent''); 6,952,192 (''the '192 patent''); 7,304,703 (''the '703 patent''); and 7,304,626 (''the '626 patent''). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following respondents: Samsung Electronics Co., Ltd. of Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Semiconductor, Inc. of San Jose, California (collectively, ''Samsung'').

On June 12, 2009, the ALJ issued his final ID finding a violation of section 337 by Samsung. He also issued his recommendation on remedy and bonding during the period of Presidential review. On June 29, 2009, Samsung and the Commission investigative attorney (''IA'') filed petitions for review of the final ID. The IA and Sharp filed responses to the petitions on July 7, 2009. On September 9, 2009, the Commission issued notice of its determination not to review the ALJ's final ID and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. 74 FR 47616–17 (Sept. 16, 2009).

On September 16 and 23, 2009, respectively, complainant Sharp, the Samsung respondents, and the IA filed briefs and reply briefs on the issues for which the Commission requested written submissions. On September 21, 2009, Samsung filed a petition for reconsideration of the Commission's

determination not to review certain portions of the final ID. On October 19, 2009, the Commission issued an order denying the petition for reconsideration.

On October 30, 2009, Samsung filed a supplemental submission on the issues of remedy, the public interest, and bonding. On November 2 and 3, 2009, respectively, Sharp and the IA filed a response to Samsung's supplemental submission.

The Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is both: (1) A limited exclusion order prohibiting the unlicensed entry of LCD devices, including display panels and modules, and products containing the same that infringe one or more of (i) claims 5–7 of the '364 patent; (ii) claims 1 and 4 of the '192 patent; (iii) claims 1–2, 6–8, 13–14, and 16–17 of the '703 patent; and (iv) claims 10, 17, and 20 of the '626 patent, where the infringing LCD devices are manufactured abroad by or on behalf of, or are imported by or on behalf of, Samsung, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns; and (2) cease and desist orders prohibiting Samsung Electronics America, Inc. and Samsung Semiconductor, Inc. from conducting any of the following activities in the United States: Importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, LCD devices, including display panels and modules, and products containing the same that infringe one or more of (i) Claims 5–7 of the '364 patent; (ii) claims 1 and 4 of the '192 patent; (iii) claims 1–2, 6–8, 13–14, and 16–17 of the '703 patent; and (iv) claims 10, 17, and 20 of the '626 patent.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the limited exclusion order or the cease and desist order. Finally, the Commission determined that a 100 percent bond of the entered value of the covered products is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42, 210.45, and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42, 210.45, 210.50).

Issued: November 9, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–27374 Filed 11–13–09; 8:45 am]

BILLING CODE 7020–06–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0074]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day Notice of Information Collection Under Review: List of Responsible Persons.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 173, pages 46466–46467, on September 9, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* List of Responsible Persons.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit. *Abstract:* All persons holding ATF explosives licenses or permits must report any change in responsible persons or employees authorized to possess explosive materials to ATF. Such report must be submitted within 30 days of the change and must include appropriate identifying information for each responsible person.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,000 respondents; it will take 1 hour to complete the report.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 100,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–27378 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0094]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Extension of a currently approved collection; certification of Qualifying State Relief From Disabilities Program.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 82, page 19985 on April 30, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Qualifying State Relief from Disabilities Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 3210.12. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local, or Tribal Government. *Other:* None. *Abstract:* The purpose of the information is to determine whether a State has certified, to the satisfaction of the Attorney General, that it has established a relief from disabilities program in accordance with the requirements of the National Instant Check System Improvement Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50 respondents, who will complete the form within approximately 15 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 50 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–27383 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0081]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Appeals of background checks.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 173, page 46466 on September 9, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agency's concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Appeals of Background Checks.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: Individuals. Abstract: The purpose of the collection is to allow applicants, employees, or other affected personnel the opportunity to appeal in writing the results of a background check conducted to satisfy their eligibility to possess explosive materials. The appeal request must include appropriate documentation or record(s) establishing the legal and/or factual basis for the challenge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will spend 2 hours completing the required documentation for the appeal.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 1,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–27385 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0009]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 30-day Notice of Information Collection Under Review: Revision of a currently approved collection. Law Enforcement Officers Killed and Assaulted Program; Analysis of Officers Feloniously Killed and Assaulted. Law Enforcement Officers Killed and Assaulted Program; Analysis of Officers Accidentally Killed.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 74, Number 172, page 46226, on September 8, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Law Enforcement Officers Killed and Assaulted Program; Analysis of Officers Feloniously Killed and Assaulted and Law Enforcement Officers Killed and Assaulted Program; Analysis of Officers Accidentally Killed.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms 1–701 and 1–701a; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* City, county, State, Federal and tribal law enforcement agencies. These forms will gather specific incident data obtained from law enforcement agencies in which an officer was accidentally killed, feloniously killed or assaulted with injury from a firearm or knife or other cutting instrument in the line of duty. Data are published annually in the publication Law Enforcement Officers Killed and Assaulted.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 258 law enforcement agency respondents; calculated estimates indicate 1 hour per report.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 258 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–27347 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0034]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Collection of Laboratory Analysis Data on Drug Samples Tested by Non-Federal (State and Local) Crime Laboratories

ACTION: 30-day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 177, page 47274 on September 15, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2009. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Collection of Laboratory Analysis Data on Drug Samples Tested by Non-Federal (State and Local Government) Crime Laboratories.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: none.

Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other: None.

Abstract: Information is needed from state and local laboratories to provide DEA with additional analyzed drug information for the National Forensic Laboratory Information System.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there are one hundred fifty (150) total respondents for this information collection. One hundred twenty (120) respond monthly at .16 hour (10 minutes) for each response and thirty (30) respond quarterly at .16 hour (10 minutes) for each response, for a total number of 1560 respondents.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 259 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA U.S. Department of Justice.

[FR Doc. E9–27346 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0029]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Annual Reporting Requirement for Manufacturers of Listed Chemicals

ACTION: 30-day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 174, page 46618 on September 10, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2009. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Reporting Requirement for Manufacturers of Listed Chemicals.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number:* none. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: This information collection permits the Drug Enforcement Administration to monitor the volume and availability of domestically manufactured listed chemicals. These listed chemicals may be subject to diversion for the illicit production of controlled substances. This information collection is required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there are one hundred (100) total respondents for this information collection. One hundred (100) persons respond at 4 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 400 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–27345 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0033]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Report of Mail Order Transaction

ACTION: 30-day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 174, page 46617, on September 10, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2009. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection 1117–0033

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Mail Order Transaction.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: none; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-Profit Institutions; State, Local or Tribal Government.

Abstract: The Comprehensive Methamphetamine Control Act of 1996 (Pub. L. 104–237) (MCA) amended the Controlled Substances Act to require that each regulated person who engages in a transaction with a non-regulated person which involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals) and uses or attempts to use the Postal Service or any private or commercial carrier shall, on a monthly basis, submit a report of each such transaction conducted during the previous month to the Attorney General.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there are 16 total respondents for this information collection; 11 for paper form at 1 hour for each response; and five (5) via electronic mail at 15 minutes per form. The total annual burden is 147 hours (132 hours for paper forms and 15 hours for electronic forms).

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 147 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice

Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–27344 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0082]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Certification of knowledge of State laws, submission of Water Pollution Act.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 173, page 46465 on September 9, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Knowledge of State Laws, Submission of Water Pollution Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. Abstract: Persons who apply for a permit to purchase explosives intrastate must certify in writing that he is familiar with and understands all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business and submit the certificate required by section 21 of the Federal Water Pollution Control Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,000 respondents; it will take an estimated time of 30 seconds to submit the required information.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 416 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–27384 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0076]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Relief of disabilities.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 173, pages 46467–46468 on September 9, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Relief of Disabilities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: Any person prohibited from shipping or transporting any explosive in or affecting interstate or foreign commerce or from receiving or possessing any explosive which has been shipped or transported in or affecting interstate or foreign commerce may make application for relief from disabilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50 respondents will take 1 minute to support documentation for relief.

(6) *An estimate of the total burden (in hours) associated with the collection:* The estimated annual total burden associated with this collection is 1 hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–27382 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0077]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Report of Lost or Stolen ATF F 5400.30, Intrastate Purchase of Explosives Coupon.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 173, page 46468 on September 9, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Stolen or Lost ATF F 5400.30, Intrastate Purchase of Explosives Coupon.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.30. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individuals or households. *Abstract:* When any Intrastate Purchase of Explosives Coupon is stolen, lost or destroyed, the person losing possession will, upon discovery of the theft, loss or destruction, immediately, but in all cases before 24 hours have elapsed since discovery, report the matter to the Director, Alcohol, Tobacco Firearms and Explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 800 respondents will complete a 20-minute form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 264 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–27381 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0073]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Furnishing of Samples.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 172, page 46225 on September 8, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Furnishing of Samples.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. *Abstract:* Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate must, when required by the Director, furnish samples of such explosive materials or ammonium nitrate; information on chemical composition of those products; and any other information that the Director determines is relevant to the identification of the ammonium nitrate.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated 2,350 respondents will take 30 minutes to submit the samples.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 1,175 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–27379 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0079]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Transactions among licensee/permittees and transactions among licensees and holders of user permits.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 74, Number 173, pages 46465–46466 on September 9, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Transactions Among Licensee/Permittees and Transactions Among Licensees and Holders of User Permits.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The Safe Explosives Act requires that an explosives distributor must verify the identity of the purchaser; an explosives purchaser must provide a copy of the license/permit to the distributor prior to the purchase of explosive materials; possessors of explosive materials must provide a list of explosive storage locations; purchasers of explosive materials must provide a list of representatives authorized to purchase on behalf of the distributor; and an explosive purchaser must provide a statement of intended use of the explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,000 respondents, who will take 30 minutes to comply with the required information.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 25,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–27380 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Application Nos. and Proposed Exemptions; D–11491, JPMorgan Chase Bank, N.A. (JPMCB or the Applicant); D–11492, Ivy Asset Management Corporation; and D–11571, The Bank of New York (BNY Mellon or the Applicant), et al.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

JPMorgan Chase Bank, N.A. (JPMCB or the Applicant), Located in New York, New York

[Application No. D–11491]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act, and the sanctions

resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, effective July 1, 2004, to the continued and future provision by JPMCB or by its current or future affiliates of letters of credit to guarantee the commercial lease obligations of unrelated third-party tenants in connection with commercial properties owned by a Fund (as defined below in Section III) or commercial properties for which a Fund has a security interest, where JPMCB is the manager and trustee (Trustee) of such Funds that hold the assets of certain employee benefit plans (the Plans), provided that the conditions set forth below in Section II are satisfied.

Section II—Conditions

A. With respect to existing or future letters of credit, each of the Funds is represented by an independent fiduciary to perform the following functions:

(1) Monitor monthly reports of rental payments of tenants utilizing such letters of credit issued by JPMCB, or any current or future affiliate of JPMCB, to guarantee their lease payments;

(2) Confirm whether an event has occurred that calls for a letter of credit to be drawn upon; and

(3) Represent each of the Funds and the Plans as an independent fiduciary in any circumstances with respect to a letter of credit which would present a conflict of interest for the Trustee or otherwise violate section 406(b), including but not limited to: the need to enforce a remedy against JPMCB or a current or future affiliate with respect to its obligations under a letter of credit.

B. With respect to future letters of credit issued by JPMCB, or any current or future affiliate of JPMCB, the following additional conditions are met:

(1) JPMCB, or any current or future affiliate of JPMCB, as the issuer of a letter of credit, has at least an ''A'' credit rating by at least one nationally recognized statistical rating service at the time of the issuance of the letter of credit;

(2) The letter of credit has objective market drawing conditions and states precisely the documents against which payment is to be made;

(3) JPMCB and its affiliates do not ''steer'' the Funds' tenants to JPMCB or its affiliates in order to obtain a letter of credit;

(4) Letters of credit are issued only to third-party tenants which are unrelated to JPMCB; and

(5) The terms of any future letters of credit are not more favorable to the tenants than the terms generally available in transactions with other similarly situated unrelated third-party commercial clients of JPMCB or of its current or future affiliates.

C. JPMCB or its affiliates maintain, or cause to be maintained, for a period of six (6) years from the date of any transactions involving letters of credit described in Section I above such records as are necessary to enable the persons, described below in Section II(D), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan whose assets are involved in letter of credit transactions described in Section I above, other than JPMCB or its affiliates, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required below by Section II(D); and

(2) A separate prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of JPMCB or its affiliates, such records are lost or destroyed prior to the end of the six-year period.

D. (1) Except as provided below in Section II(D)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in Section II(C) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, the Securities and Exchange Commission (SEC), and any U.S. banking regulatory agency;

(ii) Any fiduciary of any Plan whose assets are involved in the letter of credit transactions described in Section I above, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan whose assets are involved in the letter of credit transactions described in Section I above, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a Plan whose assets are involved in the letter of credit transactions described in Section I above, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above in Section II(D)(1)(ii)–(iv) shall be authorized to examine trade secrets of JPMCB or its affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should JPMCB or its affiliates refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(D)(2) above, JPMCB or its affiliates shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III—Definitions

A. The term ''independent fiduciary'' means Fiduciary Counselors Inc. (Fiduciary Counselors) or any successor Independent Fiduciary, provided that Fiduciary Counselors or its successor is: (1) Independent of, and unrelated to, JPMCB and its affiliates, and (2) appointed to act on behalf of each Fund for the purposes described in Section II.A and II.B above. For purposes of this proposed exemption, a fiduciary will not be deemed to be independent of, and unrelated to, JPMCB if: (i) Such fiduciary directly or indirectly, controls, is controlled by, or is under common control with JPMCB; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this proposed exemption, except that it may receive compensation for acting as an independent fiduciary from JPMCB in connection with the transactions described herein, if the amount or payment of such compensation is not contingent upon, or in any way affected by such fiduciary's decision; and (iii) more than 5 percent of such fiduciary's annual gross revenue in its prior tax year will be paid by JPMCB and its affiliates in the fiduciary's current tax year with respect to any particular 12-month tax period.

B. The term ''affiliate'' means: (1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; (2) any officer, director, or partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and (3) any corporation or partnership of which such person is an officer, director, or partner or employee. For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

C. The term ''Fund'' or ''Funds'' means ''collective investment funds,'' of JPMCB and its current or future affiliates, within the meaning of Prohibited Transaction Class Exemption 91–38 (PTE 91–38) and ''investment funds,'' of JCMCB and its current or

future affiliates, within the meaning of Prohibited Transaction Class Exemption (PTE 84–14) and encompasses the following Funds: (i) the Commingled Pension Trust Fund/Strategic Property Fund of JPMorgan Chase Bank, N.A. (the Strategic Property Fund); (ii) the Commingled Pension Trust Fund/Special Situation Property Fund of JPMorgan Chase Bank, N.A. (the Special Situation Property Fund); and (iii) the Commingled Pension Trust Fund/Mortgage Private Placement Fund of JPMorgan Chase Bank, N.A. (the Mortgage Fund).

Effective Date: The exemption is effective as of July 1, 2004.

Summary of Facts and Representations

Background

1. JPMorgan Chase & Co. (JPMCC), the parent company of JPMorgan Chase Bank, N.A. (JPMCB), is headquartered in New York. JPMCC had assets of approximately $2.2 trillion as of January 15, 2009. JPMCC has operations in more than 50 countries, and is a leader in investment banking, financial services for consumers and businesses, financial transaction processing, asset and wealth management, and private equity.

On January 14, 2004, JPMCC and Bank One Corporation (Bank One), headquartered in Chicago, Illinois, announced that they had agreed to merge in a strategic business combination that established the second largest banking franchise in the United States, based on core deposits. Completion of the merger (the Bank One Merger) occurred on July 1, 2004, and the merged company is still known as JPMorgan Chase & Co. (i.e., JPMCC). The Bank One Merger created an enterprise with a combined market capitalization of approximately $130 billion. The common stock of JPMCC trades on the New York Stock Exchange under the trading symbol ''JPM.''

Following the Bank One Merger, JPMCC announced the merger of its three lead banks, JPMorgan Chase Bank, N.A., Bank One, N.A. (Chicago Illinois), and Bank One, N.A. (Columbus Ohio), effective as of November 13, 2004. Immediately prior to such merger, JPMorgan Chase Bank converted its charter to a national bank. The name of the surviving entity in the bank merger is JPMorgan Chase Bank, N.A. (hereinafter referred to as JPMCB or the Applicant).

JPMCB is internally organized for management reporting purposes into six major business groups: (i) Asset & Wealth Management; (ii) Card Services; (iii) Commercial Banking; (iv) Investment Banking; (v) Retail Financial Services; and (vi) Treasury & Securities Services. According to the Applicant, only the first business group, Asset & Wealth Management, is relevant to this exemption request.

2. The Applicant represents that JPMCB serves as trustee of various funds, which are ''collective investment funds'' within the meaning of PTE 91–38, and ''investment funds'' within the meaning of PTE 84–14 (collectively the Funds). According to the Applicant, JPMCB, which meets (as did its predecessor, Morgan Guaranty Trust Company) the definition of a qualified professional asset manager (QPAM) within the meaning of PTE 84–14 and which is a bank maintaining a bank collective investment fund within the meaning of PTE 91–38, has ordinarily relied upon these class exemptions to conduct the activities of various Funds including the Strategic Property Fund, the Special Situation Property Fund, and the Mortgage Fund.

3. As of December 31, 2008, the Strategic Property Fund had net assets of approximately $13.7 billion, which were invested in 152 developed real estate properties, primarily office buildings, industrial parks, residential properties, retail properties, and hotels. As of December 31, 2008, the Special Situation Property Fund had net assets of approximately $2.5 billion, which were invested in real estate properties, primarily office buildings, industrial parks, residential properties, and retail properties. As of December 31, 2008, the Mortgage Fund had net assets of approximately $5.4 billion, which were invested primarily in whole loans collateralized by commercial, residential and cooperative properties, GNMA Project Loans, and residential mortgage-backed securities.

As of December 31, 2008, there were approximately 290 employee benefit plans participating in the Strategic Property Fund, 125 employee benefit plans participating in the Special Situation Property Fund, and 355 employee benefit plans participating in the Mortgage Fund. Collectively, these participating plans were comprised of both employee benefit plans subject to Title I of the Act (hereinafter the Plans), as well as employee benefit plans not subject to the Act, such as government-sponsored plans within the meaning of section 3(32) of the Act.

4. The Department previously provided individual exemptive relief in PTE 2003–10 (68 FR 28031, May 22, 2003) with respect to prohibited transactions involving certain leases and letters of credit that arose from the December 31, 2000 merger of J.P. Morgan & Company, Inc. and the Chase Manhattan Corporation (the Chase Merger), which adversely affected JPMCB's ability to rely on the administrative relief provided under PTE 84–14 and PTE 91–38. Specifically, entities that may have been parties in interest with respect to certain Plans whose assets were invested in the Strategic Property Fund and that were involved in certain leases and letters of credit transactions became affiliates of JPMCB. In accordance with the requirements of PTE 2003–10, JPMCB retained an independent fiduciary to act on behalf of the Strategic Property Fund and the participating employee benefit plans with respect to the oversight, negotiation, and approval of certain leases and letters of credit described in PTE 2003–10.

5. The Applicant represents that, just as the Chase Merger affected JPMCB's ability to rely on PTE 84–14 and PTE 91–38, the Bank One Merger also may adversely affect JPMCB's ability to rely on those class exemptions with respect to substantially similar transactions involving letters of credit. Specifically, entities that may be parties in interest with respect to the Plans and involved in the subject letters of credit (as described below) became affiliates of JPMCB as a result of the Bank One Merger. Consequently, one of the conditions of each class exemption, that the party in interest involved in a transaction may not be related to the QPAM of the investment fund (in the case of PTE 84–14) or to the trustee of the bank collective investment fund (in the case of PTE 91–38), is no longer satisfied (except to the extent that the grandfather provisions of Part V(i) of PTE 84–14 and Section IV(h) of PTE 91–38, respectively, of the exemptions are otherwise applicable). In addition, the Applicant also states that there may be issues that will arise under sections 406(b)(1) and 406(b)(2) of the Act if it needs to enforce a remedy on behalf of the Funds against itself or its affiliate regarding the Applicant's obligations under the Bank One letters of Credit. Accordingly, the Applicant seeks exemptive relief with respect to certain prohibited transactions involving Bank One-issued letters of credit that arose from the Bank One Merger.

The Bank One Letters of Credit

6. The Applicant represents that a series of letters of credit were issued by Bank One, prior to the Bank One Merger, to guarantee payment obligations of unrelated third-party tenants to pay rent for space leased in properties owned by the Funds. The tenants were not affiliates of JPMCB or Bank One prior to the Bank One Merger

and are not now affiliates of JPMCB. However, once a Bank One letter of credit is drawn upon by a lessor subsequent to the merger, the affiliation or identity between the Applicant and a JPMCB affiliate issuing the letter of credit would give rise to a prohibited transaction.[1]

The Applicant represents that a letter of credit is an instrument issued by a bank or other lending institution, whose function is similar to that of a guaranty and is used in commercial leasing transactions as a substitute for a security deposit. The Applicant further represents that the lending institution, upon issuing a letter of credit, promises that if actions of the tenant trigger certain default events set forth in the lease, such as bankruptcy of the tenant, it will make such lease payments directly to the applicable Fund up to the face amount of the letter of credit. The beneficiary of the letter of credit, one of the Funds, is issued a redeemable instrument that it may take directly to the issuing lending institution and demand payment merely by stating that payment is due pursuant to the terms of the lease. The bank that issued the letter of credit is obligated to pay without further inquiry and without any requirement on the banks part to verify the accuracy of the information provided. In general, the bank cannot be sued by the tenant for having paid under the letter of credit, absent fraud on its part. The Applicant represents that the Fund is not required to have any further involvement with the tenant in order to receive payment under the letter of credit from the bank that issued the letter of credit. The Bank One letters of credit automatically renew annually until their final stated expiration date, and are either cash collateralized by the tenants or, in the case of particularly creditworthy tenants, the tenants enter into a reimbursement agreement with the bank. The Applicant represents that the existing Bank One letters of credit are cash collateralized. The Applicant further represents that the terms of the Bank One letters of credit are governed by the 1993 Uniform Customs and Practice for Documentary Credits and contain standard provisions widely accepted in the banking industry promulgated by the International Chamber of Commerce Commission on Banking Technique and Practice, which most banking institutions incorporate by reference in their letters of credit. According to the Applicant, the previously referred to standard industry-wide provisions and terms provide certainty in execution, interpretation, and remedies with respect to the letters of credit.

The applicant also represents that it is difficult for the tenants to obtain a letter of credit if they do not otherwise have a business banking relationship with a particular bank. Therefore, if JPMCB or its affiliate is the tenant's commercial bank, then the Applicant, according to its own representations, may be that tenant's only source to obtain a letter of credit. In addition, given the increasing number of bank mergers, there are fewer banks available from which to purchase a letter of credit. Accordingly, in the absence of an individual exemption, the Applicant represents that the disqualification of JPMCB or its affiliates from the available pool of letters of credit providers would be highly disadvantageous to the Funds and the Plans.

7. The chart below shows the outstanding letters of credit that had been issued by various Bank One entities at the time of the Bank One Merger:

Fund interest	Property name	Bank One entity name	Original letter of credit amount
Strategic Property Fund (33.3%).	Century Plaza Towers	Bank One	$98,952
Special Situation Property Fund (50%).	IDI—Valwood West D (IPF 2, LP)—IPA—DUPLIUM.	Bank One, N.A. 1717 Main Street, 11th Floor, Dallas, TX 75201 (1–888–525–9395).	375,000
Special Situation Property Fund (50%).	IDI—Corporate Crossing V (IPF 1, LP)—IPA—Fairington Transportation, Inc.	Bank One, N.A. Global Trade Services, One Bank One Plaza, Mail Code IL1–0236 Chicago, IL 60670–0236 (312–954–1969) (f/k/a—American National Bank).	500,000
Strategic Property Fund (100%).	Woodfield Corporate Center	American National Bank	89,000

Future Letters of Credit

8. The future letters of credit for which the applicant has requested exemptive relief include: (i) Any letters of credit issued by JPMCB or its affiliates on or after the effective date of the Bank One Merger with respect to third-party tenants unrelated to the Applicant in Fund-owned properties or in properties with respect to which a Fund has a security interest; and (ii) Any letters of credit issued by an entity that is not an affiliate of JPMCB at the time the letter of credit is issued but that later becomes an affiliate of JPMCB pursuant to a future merger, with respect to third-party tenants in Fund-owned properties or in properties with respect to which a Fund has a security interest. The Applicant represents that the terms of any future letter of credit will not be more favorable to tenants than the terms generally available in similar transactions with other similarly situated unrelated third-party commercial clients of JPMCB or its affiliates. The Applicant further represents that an independent fiduciary will review and approve the extension of Bank One letters of credit as well as any other letters of credit that are issued by the Applicant or an affiliate (or an entity that later becomes an affiliate) to a third party tenant of a property held by a Fund or in which a Fund has a security interest.

The Independent Fiduciary

9. JPMCB has retained Fiduciary Counselors Inc. (Fiduciary Counselors) of Washington, DC as an independent fiduciary to determine on behalf of all of the Funds and Plans, among other things, whether it is appropriate to draw on any currently outstanding Bank One letters of credit or on any future letters of credit previously described herein. Fiduciary Counselors also will monitor monthly reports of rental payments by tenants so that it can confirm whether such letters of credit should be called.

[1] As a result of the Bank One Merger, JPMCB (the Applicant) will technically also be the issuer of the Bank One letters of credit.

In addition, Fiduciary Counselors will act in place of JPMCB in any situation where the Funds' rights need to be asserted against JPMCB as the issuer of the existing Bank One letters of credit or against JPMCB or its affiliates with respect to any future letters of credit.

The Applicant represents that Fiduciary Counselors is a registered investment adviser registered under the Investment Advisers Act of 1940, and acts primarily as an independent fiduciary for large pension plans. Since its formation in 1999, Fiduciary Counselors has acted as independent fiduciary in transactions involving plan assets totaling more than $4 billion. The Applicant also represents that Fiduciary Counselors has been involved in a variety of transactions requiring an independent fiduciary, such as certain prohibited transaction exemptions granted by the Department, conversion of common and collective mutual funds, mergers of mutual funds, and ESOP transactions. Fiduciary Counselors has acknowledged its duties, responsibilities and obligations as a fiduciary under ERISA to act for the exclusive benefit of the Funds and the Funds' participating plans.

Ms. Nell Hennessy is the president of Fiduciary Counselors, and will lead the project on behalf of the firm with respect to the transactions for which exemptive relief from the Department is sought. The Applicant represents that neither Fiduciary Counselors nor its affiliates are ''affiliates'' of either JPMCB or its affiliates or any of the Plans' sponsors within the meaning of 29 CFR 2570.31(a). The Applicant further represents that no more than five (5) percent of Fiduciary Counselors' annual gross revenue in its prior tax year will be paid by JPMCB and its affiliates in the fiduciary's current tax year. The Applicant represents that, in the event that Fiduciary Counselors terminates its services as the Independent Fiduciary for purposes of overseeing transactions involving the Bank One letters of credit and/or future letters of credit, JPMCB will notify the Department of such termination. In this connection, the Applicant represents that any successor Independent Fiduciary shall be independent of JPMCB and its affiliates, shall possess fiduciary experience comparable to that of Fiduciary Counselors, and shall assume all of the fiduciary responsibilities described above with respect to the oversight of current and future letters of credit described herein.

10. The Applicant represents that the proposed exemption would be administratively feasible because the Bank One and JPMCB letters of credit are, or would be, almost completely self-executing because there is essentially no discretion on the part of the issuing bank with respect to the letters of credit, and any conflict of interest situations would be handled by an independent fiduciary. The Applicant also represents that the continuance and/or future availability of the Bank One or JPMCB letters of credit would be in the interest of the Funds, the Plans, and their beneficiaries because the availability of these letters of credit mitigates the risk of loss of payment to the Funds if the applicable tenants default on their rent. The Applicant further represents that the Bank One and JPMCB letters of credit are and would be protective of the rights of the Funds' Plan participants and beneficiaries because they allow the Funds to recover some or all of lost rental income despite a default by the tenant, and because they incorporate standard industry-wide terms that provide certainty in execution, interpretation, and remedies.

Existing Commercial Leases and the Bank One Merger

11. Although the Applicant withdrew its request for individual exemptive relief with respect to two Bank One leases involving the Strategic Property Fund that were in effect as of the date of the Bank One Merger, the Applicant has made the following representations regarding such leases and their renewals. The Applicant represents that, prior to the Bank One Merger, Bank One Arizona, N.A., an affiliate of Bank One, leased commercial office space in Vodaphone Plaza, a Class A office building in Walnut Creek, California, a property wholly owned by the Strategic Property Fund. The Vodafone Plaza property represented approximately 0.39% of the net asset value of the Strategic Property Fund. Bank One Arizona, N.A. occupied 3,811 square feet, or 1.9%, of the property under a lease (the Original Lease) that originally commenced on May 9, 1997 and that expired, by its terms, on May 8, 2005.[2] The Applicant represents that the original terms of the 1997 Bank One lease executed between Bank One, as tenant, and the Strategic Property Fund, as landlord, was negotiated and entered into between the parties when they were unrelated and when JPMCB was acting on behalf of the Funds as a fiduciary. The Applicant represents that JPMCB met the definition of a QPAM at the time that the Original Lease was entered into between the Strategic Property Fund and Bank One Arizona, N.A. The Applicant further represents that, because the Original Lease that was executed in 1997 continued to be in effect at the time of the 2004 Bank One Merger, the Vodaphone Plaza lease transaction met the requirements of Part I (the General Exemption) of PTE 84–14 between July 1, 2004 and the expiration of the Original Lease.[3]

12. The Applicant also represents that Fiduciary Counselors Inc., acting as an independent fiduciary, negotiated a renewal of the lease of the Vodaphone Plaza property on behalf of the Strategic Property Fund in March of 2005, and the lease renewal became effective in May of 2005.[4] On September 12, 2007, the Vodafone Plaza property was sold by the Strategic Property Fund to an unrelated third party, SVF Oak Road Walnut Creek Corporation (SVC), a subsidiary of a fund managed by American Realty Advisors.

The Applicant further represents that, between the lease renewal and September 12, 2007, the Vodaphone Plaza lease met the conditions of Part III (the Specific Lease Exemption) of PTE 84–14 for the leasing of office or commercial space by an investment fund managed by a QPAM or its affiliate to the QPAM, and therefore an individual exemption is not necessary to cover the lease renewal. Specifically, the Applicant represents that the requirements of Part III of PTE 84–14 were satisfied during the renewal period because: (1) The Vodaphone Plaza lease was for office space; (2) JPMCB is both a QPAM with respect to the Strategic Property Fund (which wholly owned the property that was the subject of the Vodaphone Plaza lease), and is also an affiliate of Bank One Arizona, N.A., the lessee; (3) The unit of space subject to the lease was suitable for use by different tenants; (4) At the time the transaction was entered into (and at the

[2] The Applicant represents that the Original Lease was modified on February 22, 2000, prior to the Bank One Merger, to increase the amount of space occupied by Bank One Arizona, N.A. in the Vodaphone Plaza office building to 3,811 square feet. The lease was amended on May 5, 2005 (*i.e.,* the date upon which the negotiations were finalized).

[3] The Department has expressed the view that the relief from the restrictions of section 406(a) of the Act that is provided under Part I of PTE 84–14 would be generally available for a continuing transaction (*e.g.,* a loan or lease), provided that all the conditions of the exemption are satisfied on the date on which the transaction is entered into, notwithstanding the subsequent failure to satisfy one or more of the conditions of the class exemption (such as the requirement of Part I of PTE 84–14 that the subject transaction not occur with a party ''related to'' the QPAM). See Preamble to Proposed Amendment to PTE 84–14, 68 FR 52423 (September 3, 2003).

[4] The Department expresses no opinion herein as to whether the 2005 renewal of the Vodafone Plaza lease by the Fund may have violated any of the provisions of Part 4 of Title I of the Act.

time of any subsequent renewal or modification that required the consent of the Trustee as QPAM), the terms of the transaction were not more favorable to the lessee, Bank One Arizona, N.A., than the terms generally available in an arm's length transaction between unrelated parties;[5] (5) No commission or other fee was paid by the Strategic Property Fund in connection with the Vodaphone Plaza lease to the QPAM, nor was any commission or fee paid to any person or entity (or any affiliate) who made the decision to have, or had the direct authority to direct, any Plan to invest in the Strategic Property Fund; and (6) The amount of space covered by the lease (*i.e.,* 3,811 square feet, or 1.9% of the rentable area of the Vodaphone Plaza property) did not exceed the greater of 7,500 square feet or one percent (1%) of the available space of the Vodaphone Plaza property.[6]

13. The Applicant also represents that, prior to the Bank One Merger, the Banc One Trust Company, an affiliate of Bank One, leased commercial office space in the Dugan Texas—Texas Plaza I, an industrial building located in Irving, Texas. The Strategic Property Fund has a 50% ownership interest in this property. Banc One Trust Company occupies 54,146 square feet, or 46.7% of the net rentable area, of the Texas Plaza I property under a lease which commenced on July 15, 1999 and which was renewed upon its expiration on August 14, 2006. Prior to the renewal of the lease, Banc One Trust Company paid rent in the amount of $10.25 per square foot per year for the Texas Plaza I property.[7] The Applicant represents that JPMCB, in its capacity as trustee of the Strategic Property Fund, was not involved in the lease renewal decision-making process; rather, the other 50% owner of the Texas Plaza I property (*i.e.,* Duke-Weeks Realty Limited Partnership, now doing business as Duke Realty Limited Partnership and hereinafter referred to as ''Duke Weeks'') made the lease renewal decision without consulting the Strategic Property Fund in any manner.

The Applicant further represents that, on December 28, 2000, pursuant to a 50/50 joint venture by Dugan Texas Acquisition LLC (of which the Strategic Property Fund is the sole member) and Duke Weeks, a real estate operating company known as Dugan Texas LLC was formed. The Applicant represents that Dugan Texas LLC was established to operate and manage thirteen commercial real estate properties (including the Texas Plaza I property) that were initially contributed to it by Duke Weeks on December 28, 2000. The Applicant represents that, since its establishment on December 28, 2000, Dugan Texas LLC has operated so as to qualify as a real estate operating company (REOC), within the meaning of the Department's ''plan asset regulation'' at 29 CFR 2510.3–101.[8]

14. In summary, the transactions for which exemptive relief is sought meet the statutory criteria of section 408(a) of the Act because: (A) With respect to existing or future letters of credit described herein, each of the Funds is represented by an independent fiduciary to perform the following functions: (1) Monitor monthly reports of rental payments of tenants utilizing such letters of credit issued by JPMCB, or any current or future affiliate of JPMCB, to guarantee their lease payments; (2) Confirm whether an event has occurred that calls for a letter of credit to be drawn upon; and (3) Represent each of the Funds and the Plans as an independent fiduciary in any circumstances with respect to a letter of credit which would present a conflict of interest for the Trustee or otherwise violate section 406(b), including but not limited to: The need to enforce a remedy against itself or a current or future affiliate with respect to its obligations under a letter of credit; (B) The issuance of future letters of credit by JPMCB, or any current or future affiliate of JPMCB, are subject to the following additional conditions: (1) JPMCB, or any current or future affiliate of JPMCB, as the issuer of a letter of credit, has at least an ''A'' credit rating by at least one nationally recognized statistical rating service at the time of the issuance of the letter of credit; (2) The letter of credit has objective market drawing conditions and states precisely the documents against which payment is to be made; (3) JPMCB and its affiliates do not ''steer'' the Funds' tenants to JPMCB or its affiliates in order to obtain a letter of credit; (4) Letters of credit are issued only to third-party tenants which are unrelated to JPMCB; and (5) The terms of any future letters of credit are not more favorable to the tenants than the terms generally available in transactions with other similarly situated unrelated third-party commercial clients of JPMCB or of its current or future affiliates; and (C) JPMCB or its affiliates will maintain records that are sufficient for regulatory authorities and independent third parties to determine whether the conditions of this proposed exemption have been met.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Applicant and the Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

For Further Information Contact: Mr. Mark Judge of the Department at (202) 693–8550. (This is not a toll-free number).

The Bank of New York Mellon (BNY Mellon or the Applicant) Located in New York, NY

[Application No. D–11571]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If granted, the restrictions of sections 406(a) and 406(b)(1) and 406(b)(2) of the Act (or ERISA) and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of February 20, 2009, to the cash sale of certain floating rate securities (the Securities) issued by Lehman Brothers Holdings, Inc. or its affiliates (together, Lehman) for an aggregate purchase price of $235,737,419.05 by the EB Temporary Investment Fund—Lehman (Liquidating

[5] This ''arm's length'' determination was addressed by Fiduciary Counselors in its report dated April 13, 2009, based upon material compiled by CB Richard Ellis on January 21, 2005.

[6] The Department is not providing any views in this proposed exemption as to whether the conditions of PTE 84–14 were met in connection with the Vodaphone Plaza lease transactions.

[7] The Applicant represents that the Texas Plaza I lease executed between Banc One Trust Company, as tenant, and the Strategic Property Fund, as landlord, was originally negotiated and entered into between the contracting parties when they were completely unrelated and when JPMCB was acting on behalf of the Strategic Property Fund as an independent ERISA fiduciary.

[8] The Department is not providing any opinion in this proposed exemption as to whether Dugan Texas LLC, which manages the Texas Plaza I lease, qualifies as a REOC, within the meaning of 29 CFR 2510.3–101(e), and therefore is not expressing any opinion as to whether the Texas Plaza I lease arrangement constitutes a prohibited transaction pursuant to section 406 of the Act or section 4975 of the Code. In this connection, the Department has noted in 29 CFR 2509.75–2(c) (Interpretive Bulletin 75–2, or IB 75–2) and subsequent opinions interpreting IB 75–2 that, although a transaction between a party in interest and a corporate entity in which the assets of a plan are invested does not generally give rise to a prohibited transaction, a violation of section 406 of the Act or section 4975 of the Code may occur in instances where a plan invests in a corporation as part of an arrangement or understanding under which it is expected that the corporation will engage in a transaction with a party in interest. See Advisory Opinion 2006–01A (January 6, 2006).

Fund), the EB SMAM Short Term Investment Fund—Lehman (Liquidating Fund), the DF Temporary Investment Fund—Lehman (Liquidating Fund) and the Pooled Employee Daily Liquidity Fund—Lehman (Liquidating Fund) (collectively, the ''Liquidating Funds'') to the Bank of New York Mellon Corporation (BNYMC), a party in interest with respect to employee benefit plans (the Plans) invested, directly or indirectly, in the Liquidating Funds, provided that the following conditions are met:

(a) The sale was a one-time transaction for cash;

(b) The Liquidating Funds received an amount for the sale of the Securities, which was equal to the sum of (1) the par value of the Securities plus (2) accrued but unpaid interest through September 12, 2008, determined at the contract rate, plus (3) accrued and unpaid interest from September 15, 2008 through the earlier of (i) the date of sale or (ii) the maturity date of the Securities, determined at the investment earnings rate of the collective fund (the Collective Fund) from which the Securities were transferred to the Liquidating Fund for the period from September 15, 2008 to the earlier of the maturity date of the Security or February 20, 2009;

(c) The Liquidating Funds did not bear any commissions, fees, transaction costs or other expenses in connection with the sale of the Securities;

(d) BNY Mellon, as trustee of the Liquidating Funds, determined that the sale of the Securities was appropriate for and in the best interests of the Liquidating Funds, and the Plans invested, directly or indirectly, in the Liquidating Funds, at the time of the transaction;

(e) BNY Mellon took all appropriate actions necessary to safeguard the interests of the Liquidating Funds, and the Plans invested, directly or indirectly, in the Liquidating Funds, in connection with the transaction;

(f) If the exercise of any of BNYMC's rights, claims or causes of action in connection with its ownership of the Securities results in BNYMC recovering from Lehman, the issuer of the Securities, or from any third party, an aggregate amount that is more than the sum of:

(1) The purchase price paid for the Securities by BNYMC; and

(2) interest on the par value of the Securities from and after the date BNYMC purchased the Securities from the Liquidating Funds, determined at the last-published interest rate on the Securities preceding the Lehman's bankruptcy filing, BNYMC refunds such excess amount promptly to the Liquidating Funds (after deducting all reasonable expenses incurred in connection with the recovery);

(g) BNY Mellon and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the person described below in paragraph (h)(1), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan which engages in the covered transaction, other than BNY Mellon and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (h)(1);

(2) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of BNY Mellon or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided, below, in paragraph (h)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission; or

(B) Any fiduciary of any Plan that engages in the covered transaction, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the covered transaction, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in the covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in paragraph (h)(1)(B)–(D) shall be authorized to examine trade secrets of BNY Mellon or its affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should BNY Mellon refuse to disclose information on the basis that such information is exempt from disclosure, BNY Mellon shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Effective Date: If granted, this proposed exemption will be effective as of February 20, 2009.

Summary of Facts and Representations

1. BNY Mellon is a state bank subject to regulation by the State of New York. As of December 31, 2008, BNY Mellon managed assets in excess of $210 billion, a substantial part of which consisted of Plans subject to the Act. BNY Mellon is a subsidiary of BNYMC.

2. BNYMC is the parent of BNY Mellon by reason of its 100% ownership of BNY Mellon. BNYMC has a number of subsidiaries and affiliates. It is a Delaware financial services company that provides a wide range of banking and fiduciary services to a broad array of clients, including employee benefit plans subject to the Act and section 4975 of the Code. As of December 31, 2008, BNYMC had total assets of $237.5 billion.

3. The EB Temporary Investment Fund, the EB SMAM Short Term Investment Fund, the DF Temporary Investment Fund and the Pooled Employee Daily Liquidity Fund are either collective investment funds or common trust funds trusteed and managed by BNY Mellon. BNY Mellon serves as a discretionary trustee for each of the Collective Funds. Three of the Collective Funds are group trusts that are exempt from federal income tax pursuant to Rev. Rul. 81–100. Accordingly, all of the investors in these Collective Funds, including three BNY Mellon/BNYMC in-house Plans,[9] are either qualified plans or eligible government plans. There are no individual retirement accounts in any of these Collective Funds.

The DF Temporary Investment Fund is a common trust fund that is exempt from federal income tax pursuant to section 584 of the Code. The investors in this Collective Fund as to which BNY Mellon or one of its affiliates is the trustee include trusts for individuals, nuclear decommissioning trusts, trusts for endowments, private foundations and other tax exempt institutional investors, and certain employee benefit trusts subject to the Act (*e.g.*, VEBA trusts).

Each of the Collective Funds is a short-term investment fund that values

[9] According to the Applicant, the in-house Plans' investments in the Collective Funds range from 0% for the DF Temporary Investment Fund to less than 4% of the EB Temporary Investment Fund.

its assets based on their amortized cost and seeks to maintain a constant unit value equal to $1.00. The Collective Funds invest in a variety of fixed income instruments. As of September 15, 2008, the value of the Collective Funds' aggregate portfolios was $19,961,181,990.59.[10] As of September 15, 2008 there were in excess of 700 investors in the Collective Funds, a substantial number of which were Plans subject to the Act. The other investors included government plans.

4. The Collective Funds purchased the Securities, which were floating rate securities issued by Lehman, an unrelated party, between 2005 and 2007 for acquisition prices ranging from $7,250,000 to $102,000,000, and for a total investment of $233,250,000. The acquisition prices represented the amortized cost of the Securities. The Securities paid interest on a quarterly basis, with the result that each Collective Fund collected interest from the purchase date through either June 23, 2008 or July 22, 2008. The interest payments ranged from $759,804.42 to $6,860,087.55 for a total payment of $15,459,605.43. No interest was paid subsequent to September 15, 2008.

As of September 15, 2008, the approximate net asset value of each Collective Fund was as follows:

The EB Temporary Investment Fund ($4,527,000); the EB SMAM Short Term Investment Fund ($2,070,000); the Pooled Employee Daily Liquidity Fund ($12,423,000,000); and the DF Temporary Investment Fund ($706,000,000).

Set forth below is a table showing each Collective Fund's investment in the Securities prior to Lehman's bankruptcy:

Fund name	Security name, CUSIP and maturity date	Acquisition and par price	Purchase date	Last published interest rate (percent)	Total interest received prior to 9/15/08
EB Temp. Inv. Fund	Lehman Fltr. 52517PW31; 3/23/09.	$50,000,000	3/22/07	7.413	$3,362,788.21
EB SMAM Short Term Inv. Fund	Lehman Fltr. 52517PW31; 3/23/09.	74,000,000	3/22/07	7.413	4,976,925.25
Pooled Employee Daily Liquid Fund.	Lehman Fltr. 52517PW31; 3/23/09.	102,000,000	3/22/07	7.413	6,860,087.55
DF Temp. Inv. Fund	Lehman Fltr. 52517PC58; 10/22/08.	7,250,000	10/24/05	8.00175	759,804.42
Totals:		233,250,000			$15,959,605.43

5. The decision to invest in the Securities was made by BNY Mellon. Prior to the investment, BNY Mellon conducted an investigation of the potential investment by examining and considering the economic and other terms of the Securities. BNY Mellon represents that the investment in the Securities was consistent with the applicable investment policies and objectives of the respective Collective Fund. At the time the Securities were acquired, they were rated ''A1'' by Moody's and ''A+'' by S&P rating agencies. Based on its consideration of the relevant facts and circumstances, BNY Mellon states that it was prudent and appropriate to acquire the Securities on behalf of the Collective Funds.[11]

6. As stated above, on September 15, 2008, Lehman filed for Chapter 11 bankruptcy protection. BNY Mellon represents that following the Issuers' bankruptcy, BNY Mellon determined that it would be in the best interest of the Collective Funds to segregate the Securities from the other assets of the Collective Funds. Therefore, BNY Mellon established the Liquidating Funds to hold the Securities as of such date in the following Liquidating Funds: The EB Temporary Investment Fund—Lehman (Liquidating Fund), the EB SMAM Short Term Investment Fund—Lehman (Liquidating Fund), the DF Temporary Investment Fund—Lehman (Liquidating Fund) and the Pooled Employee Daily Liquidity Fund—Lehman (Liquidating Fund). BNY Mellon also served as the trustee and the manager of each Liquidating Fund. The Applicant represents that BNY Mellon intended to hold the Securities in the Liquidating Funds pending the disposition of the Securities on the market. BNY Mellon further represents that each Collective Fund held 100 percent of the interests of its corresponding Liquidating Fund, and, in turn, the account of each direct investor in such Collective Fund as of September 15, 2008, was credited with units of the applicable Liquidating Fund in lieu of its interests in the Securities.

7. The Applicant represents that on September 30, 2008, the Liquidating Funds entered into guarantees with BNY Mellon pursuant to which BNY Mellon agreed to provide financial support to the Liquidating Funds for an amount up to the par value of the Securities and the accrued and unpaid interest on the Securities through September 12, 2008.[12] The purpose of these guarantees was to enable BNY Mellon and the Collective Funds' investors to value the units of the Liquidating Funds at one dollar per unit.[13]

[10] It is represented that section 408(b)(8) of the Act would apply to the investment by the ERISA-covered plans in the Collective Funds. Section 408(b)(8) of the Act provides a statutory exemption for any transactions between a plan and a common or collective trust fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency if certain requirements are met.

[11] The Department is expressing no opinion in this proposed exemption on whether the acquisition and holding of the Securities by the Collective Funds violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

[12] Because September 12 fell on a Friday, the accrued interest on such date included the interest for September 13 and September 14.

[13] The Applicant represents that the guarantees are extensions of credit eligible for exemption under Prohibited Transaction Exemption (PTE) 80–26, 66 FR 54541 (Oct. 29, 2001). PTE 80–26, a class exemption, permits parties in interest to employee benefit plans to make certain interest free loans to such plans provided certain conditions are met. The

8. BNY Mellon represents that following the date of the Lehman's bankruptcy filing, the market value of the Securities decreased substantially. BNY Mellon further states that on February 20, 2009, it obtained pricing information from two independent broker-dealers, Barclays and Morgan Stanley, who confirmed in e-mail messages that the market for the Securities was in extreme distress and that prices for actual trades were substantially lower than the sum of the par value for the Securities plus accrued and unpaid interest thereon. The broker-dealers did not provide written analyses of their findings.

9. In view of the foregoing, BNY Mellon determined that it would be appropriate and in the best interest of the Liquidating Funds if the Securities were sold by the Liquidating Funds to BNYMC at a price equal to the sum of (x) their par value and (y) any accrued but unpaid interest, as doing so would protect the Funds and the investors having an interest in the Liquidating Funds from potential investment losses with respect to the Securities. BNY Mellon also determined that the purchase of the Securities by BNYMC would be permissible under applicable banking law.

10. Shortly before the consummation of the transaction on February 19, 2009, BNY Mellon sent written notice to the designated representative of each of the investors having a direct interest in the Liquidating Funds of BNY Mellon's intent to cause the Liquidating Funds to sell the Securities to BNYMC on February 20, 2009. For purposes of the transaction, the notice stated that the purchase price would be distributed to the unit holders. Such amount would also include an interest component based on the period after September 12, 2008. As a result, the notice further explained that the investor's account would no longer hold units in a Liquidating Fund. While the notice did not require any response, the Applicant represents that it did not receive any negative reaction from any of the recipients thereof.

11. On February 20, 2009, BNYMC purchased the Securities from the Liquidating Funds for an aggregate lump sum payment of $235,737,419.05. This amount represented the sum of the par value of the Securities ($233,250,000) plus the accrued but unpaid interest on the Securities (x) through September 12, 2008 ($1,546,011.97) at the contract rate (which also included accrued interest for September 13th and 14th), and (y) interest from September 15, 2008 through the earlier of February 20, 2009 or the maturity date of the applicable Security at the investment earning rate achieved by the corresponding Collective Fund during such period ($941,407.08).[14] BNY Mellon notes that, in determining the amount of accrued interest subsequent to the date of Lehman's bankruptcy filing, BNY Mellon utilized the investment earnings interest rate earned by the corresponding Collective Fund during such period. On April 21, 2009, the Liquidating Funds were formally terminated.

12. BNY Mellon, as trustee of the Liquidating Funds, believed that the sale of the Securities to BNYMC was in the best interests of the Liquidating Funds, and the Plans invested, directly or indirectly, in the Liquidating Funds, at the time of the transaction. BNY Mellon states that any sale of the Securities on the open market would have produced significant losses for the Liquidating Funds and for the participating investors in the Funds.

13. BNY Mellon represents that the sale of the Securities by the Liquidating Funds to BNYMC benefited the investors in the Liquidating Funds because the purchase price paid by BNYMC for the Securities substantially exceeded the aggregate fair market value of the Securities. In addition, BNY Mellon states that the transaction was a one-time sale for cash in connection with which the Liquidating Funds did not bear any brokerage commissions, fees, or other expenses. BNY Mellon represents that it took all appropriate actions necessary to safeguard the interests of the Liquidating Funds and their participating investors in connection with the sale of the Securities.

Accordingly, BNY Mellon has requested an administrative exemption from the Department with respect to the sale of the Securities by the Liquidating Funds to BNYMC. If granted, the exemption would be effective as of February 20, 2009.

14. BNY Mellon states that the sale of the Securities by the Liquidating Funds to BNYMC resulted in an assignment of all of the Liquidating Funds' rights, claims, and causes of action against Lehman or any third party arising in connection with or out of the issuance of the Securities or the acquisition of the Securities by the Funds. BNY Mellon states further that if the exercise of any of the foregoing rights, claims or causes of action results in BNYMC recovering from Lehman or any third party an aggregate amount that is more than the sum of (a) the purchase price paid for the Securities by BNYMC; and (b) interest on the par value of the Securities from and after the date BNYMC purchased the Securities from the Liquidating Funds, determined at the last-published rate on the Securities preceding Lehman's bankruptcy filing, BNYMC will refund such excess amount promptly to the Funds (after deducting all reasonable expenses incurred in connection with the recovery).

15. In summary, the Applicant represents that the transaction satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale was a one-time transaction for cash;

(b) The Liquidating Funds received an amount for the sale of the Securities, which was equal to the sum of (1) the par value of the Securities plus (2) accrued but unpaid interest through September 12, 2008, determined at the contract rate, plus (3) accrued and unpaid interest from September 15, 2008 through the earlier of (i) the date of sale or (ii) the maturity date of the Securities, determined at the investment earnings rate of the Collective Fund from which the Securities were transferred to the Liquidating Fund for the period from September 15, 2008 to the earlier of the maturity date of the Security or February 20, 2009;

(c) The Liquidating Funds did not bear any commissions, fees, transaction costs or other expenses in connection with the sale;

(d) BNY Mellon, as trustee of the Liquidating Funds, determined that the sale of the Securities was appropriate for and in the best interests of the Liquidating Funds, and the Plans invested, directly or indirectly, in the Liquidating Funds, at the time of the transaction;

(e) BNY Mellon took all appropriate actions necessary to safeguard the interests of the Liquidating Funds, and the employee benefit plans invested, directly or indirectly, in the Liquidating Funds, in connection with the transaction;

(f) If the exercise of any of BNYMC's rights, claims or causes of action in connection with its ownership of the Securities results in BNYMC recovering from Lehman, or any third party, an

Department expresses no opinion herein on whether the guarantees satisfy the requirements of PTE 80–26.

[14] The last published interest rate for each of the Securities at the contract rate in effect immediately preceding Lehman's bankruptcy is set forth herein in the table. The investment earnings rate for each Collective Fund for the relevant period on and after September 15, 2008 is as follows: the EB Temporary Investment Fund (1.28707%), the EB SMAM Short Term Investment Fund (0.68443%), the Pooled Employee Daily Liquidating Fund (0.96503%), and the DF Temporary Investment Fund (2.383131%).

aggregate amount that is more than the sum of:

(1) The purchase price paid for the Securities by BNYMC; and

(2) interest on the par value of the Securities from and after the date BNYMC purchased the Securities from the Liquidating Funds, determined at the last-published interest rate on the Securities preceding Lehman's bankruptcy filing, BNYMC will refund such excess amount promptly to the Liquidating Funds (after deducting all reasonable expenses incurred in connection with the recovery);

(g) BNY Mellon and its affiliates, as applicable, have maintained, or will cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable persons such as, employers or representatives of the Department, plan fiduciaries or plan participants, to determine whether the conditions of this exemption have been met.

For Further Information Contact: Anh-Viet Ly of the Department, telephone (202) 693–8648. (This is not a toll-free number).

Ivy Asset Management Corporation
Located in Jericho, NY
[Application No. D–11492]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I: Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[15] shall not apply, effective December 31, 2008, to:

(a) The sale for cash of certain equity interests (the Shares) in hedge funds organized outside the United States,[16] which Shares are held in the Ivy Enhanced Income Fund (the Fund), a sub-fund established under the Alternative Investment-Master Group Trust (the Group Trust), to Ivy Asset Management Corporation (Ivy), a party in interest with respect to certain employee benefit plans, including a defined benefit plan (the Retirement Plan) sponsored by Ivy's parent corporation, The Bank of New York Mellon Corporation,[17] (collectively, the Plan(s)), and certain individual retirement accounts (the IRA(s)), where such Plans and IRAs have interests in the Fund; provided that at the time the Shares were sold, the conditions set forth, below, in section I(b)(1)–(6) of this proposed exemption, and the general conditions, set forth, below, in section II, of this proposed exemption, were satisfied; and

(b) The sale for cash of certain restricted shares (the Restricted Shares) of the D. E. Shaw Composite International Fund, Ltd. (the DE Shaw Fund), a hedge fund organized outside the United States, to Ivy Holding Cayman, LTS, an affiliate of Ivy (the Affiliate) which is also organized outside of the United States, and which is a party in interest with respect to the Plans and the IRAs, where such Plans and IRAs have interests in the Fund; provided that at the time the Restricted Shares were sold to the Affiliate, the conditions set forth, below, in section I(b)(1)–(6) of this proposed exemption, and the general conditions, set forth, below, in section II of this proposed exemption, were satisfied:

(1) The sale of the Shares to Ivy and the sale of the Restricted Shares to the Affiliate were each one-time transactions for cash;

(2) The purchase price paid by Ivy for the Shares and the purchase price paid by the Affiliate for the Restricted Shares was equal to the value of such shares, as reported to the Fund by investment managers of the hedge funds (the Manager(s)), who are independent of and unrelated to Ivy and any of its affiliates, as set forth on the most recent statement issued to the Fund immediately prior to the effective date of this proposed exemption;

(3) The Fund did not incur any commissions or transaction costs with respect to the sale of the Shares to Ivy and with respect to the sale of the Restricted Shares to the Affiliate;

(4) On January 29, 2008, Ivy solicited and received from each of the Plans and IRAs which have an interest in the Fund (the Unit Holder(s)) an affirmative consent to the sale by the Fund of the Shares and of the Restricted Shares;

(5) On January 29, 2008, Ivy solicited and received from each Unit Holder in the Fund an affirmative consent to the entry into a promissory note (the Promissory Note(s)), and as of the effective date of this proposed exemption Ivy entered into such Promissory Notes; and

(6) Pursuant to the terms of each of the Promissory Notes entered into between Ivy and each Unit Holder, in the event that Ivy receives redemption proceeds in excess of the purchase price paid by Ivy to the Fund for the Shares, and/or in the event the Affiliate receives redemption proceeds in excess of the purchase price paid by the Affiliate to the Fund for the Restricted Shares, Ivy will pay, as soon as practicable after receipt of such amounts by Ivy and/or by the Affiliate, the entirety of such excess in cash to each Unit Holder in proportion to each such Unit Holder's investment in the Fund; and Ivy will absorb the loss, if the aggregate redemption proceeds are less than the aggregate purchase price from the sale of the Shares and the sale of the Restricted Shares.

Section II: General Conditions

(a) Ivy, as investment manager of the Fund, represents that the subject transactions are appropriate for and in the interest of the Fund, and each of the Unit Holders which have an interest in the Fund.

(b) Ivy takes all appropriate actions necessary to safeguard the interests of the Fund, and the interests of the Unit Holders in the Fund, in connection with the subject transactions;

(c) The decision by a Unit Holder as to whether to engage in the subject transactions was made, in the case of a Plan by the trustee of each such Plan, in the case of an IRA, by the IRA holder, and in the case of the Retirement Plan by the Benefits Investment Committee (the Committee), which serves as the named fiduciary of the Retirement Plan.

(d) Notwithstanding affirmative consent given by each of the Unit Holders to the sale by the Fund of the Shares and of the Restricted Shares, and notwithstanding the entry into the Promissory Notes between Ivy and each Unit Holder:

(i) The Plans and IRAs have not waived or released and do not waive or release any claims, demands, and/or causes of action which such Plans and IRAs may have against BNYMC and/or Ivy in connection with the acquisition and retention of the Shares and the acquisition and retention of the Restricted Shares; and

[15] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[16] It is represented that to the extent that, prior to the effective date of the final exemption, the Fund had received distributions from the hedge funds in connection with interests in such hedge funds held by the Fund, those proceeds would have been distributed by the Fund to each holder of units in the Fund in proportion to each such holder's interest in the Fund; and accordingly, would not have been purchased by Ivy or by any affiliate of Ivy, pursuant to this proposed exemption.

[17] The Bank of New York Mellon Corporation is hereinafter referred to as BNYMC.

(ii) The Plans and IRAs have not waived or released and do not waive or release any claims, demands, and/or causes of action which such Plans and IRAs may have against BNYMC and/or Ivy in connection with the sale of the Shares to Ivy and the sale of the Restricted Shares to the Affiliate;

(e) Ivy will maintain, or cause to be maintained, for a period of six (6) years from the date of any of the subject transactions such records as are necessary to enable the persons described, below, in section II(f)(1) of this proposed exemption, to determine whether the conditions of this proposed exemption have been met, except that—

(1) No party in interest with respect to a Plan or to an IRA which engaged in the subject transactions, other than Ivy and the Affiliate, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by section II(f)(1) of this proposed exemption; and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Ivy, such records are lost or destroyed prior to the end of the six-year period.

(f)(1) Except as provided, below, in section II(f)(2) of this proposed exemption, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in section II(e) of this proposed exemption, are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission; or

(B) Any fiduciary of any Plan or any IRA that engaged in the subject transactions, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan or an IRA that engaged in the subject transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan or an IRA that engaged in the subject transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in section II(f)(1)(B)–(D) of this proposed exemption, shall be authorized to examine trade secrets of Ivy, or commercial or financial information which is privileged or confidential; and

(3) Should Ivy refuse to disclose information on the basis that such information is exempt from disclosure, Ivy shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Effective Date: This proposed exemption, if granted, will be effective, December 31, 2008.

Summary of Facts and Representations

1. The applicant for this proposed exemption is Ivy, a Delaware corporation. On January 1, 2009, Ivy converted to a Delaware limited liability corporation and changed its name to Ivy Asset Management LLC. Ivy is a registered investment adviser under the laws of Delaware, having its principal place of business in Garden City, New York.

2. The Group Trust qualifies as a group trust, pursuant to Revenue Ruling 81–100. The Group Trust is exempt from taxation under section 501(a) of the Code. Ivy is the investment manager of the Group Trust. Custodial Trust Company, a wholly-owned subsidiary of Bear Stearns Companies, Inc., was the trustee of the Group Trust until July 31, 2007. Wells Fargo and Company, a diversified financial services company, became the trustee of the Group Trust on August 1, 2007.

3. The Fund is an Investment Fund established under the Group Trust, as set forth in Section 4.01 of the Group Trust Agreement. As required under Revenue Ruling 81–100, participation in the Fund is limited to certain investors which are themselves exempt from Federal income taxes. In this regard, each of the Unit Holders in the Fund is either a Plan or an IRA. As of August 6, 2008, there were eight (8) Plans and four (4) IRAs each of which had an interest in the Fund. The Fund does not put a limit on the number of units that may be issued to the Unit Holders.[18]

The Fund has issued three (3) classes of units, Class C units, Class D units, and Class E units. The holders of Class C units paid a management fee of 1.5% and paid no performance fees. The minimum investment for the holders of Class C units was $1 million. The Class D units had a tiered management fee and paid a performance fee. The minimum investment for the holders of Class D units was $500,000. In all other material respects the Class C units and the Class D units were the same.

The Retirement Fund is the only holder of Class E units. The Retirement Fund invested $25 million in Class E units in the Fund in 1996 and over time has received in excess of $33,503,000 in distributions. Ivy does not receive any fees with respect to the Class E units.

The net asset value (NAV) of the Fund is determined at the end of each calendar quarter and at such other times as determined by the investment manager. The NAV is equal to the total value of the Fund's assets minus the total value of its liabilities. The value of each unit equals the capital attributable to each unit class of the Fund divided by the outstanding units for each unit class on such valuation date. All outstanding Class C units, Class D units, and Class E units were redeemed.

The Fund is a Section 3(c)(1) fund, as defined in the Investment Company Act of 1940. The Fund is not a registered open-ended investment company. Rather, it is a privately offered fund of funds that invests in private investment vehicles commonly referred to as hedge funds. The Fund is a fund of hedge funds. All of the holdings in the Fund are equity interests in hedge funds which are sponsored by investment Managers unrelated to Ivy and to any of its affiliates.

The Fund is operated pursuant to Commodity Futures Trading Commission (CFTC) exemption Regulation 4.13(a)(4). As such, the investment manager of the Fund is not required to register with the CFTC as a commodity pool operator. In this regard, the investment manager is not required to deliver a CFTC disclosure document and a certified annual report to participants in the pool.

The Fund is subject to tax on the unrelated business taxable income which is generated from income from debt financed investments. It is represented that such tax is paid by the Group Trust, not directly by the participants in the Fund.

As Ivy, the investment manager of the Fund, is a subsidiary of BNYMC, a United States bank holding company, the Fund is subject to the Bank Holding Company Act (the BHCA). Due to BNYMC's regulatory elections, the Fund is subject to the provisions of the BHCA governing merchant banking activities and to the provisions of the Federal Reserve Board's Merchant Banking Regulations. Under such regulations, the

[18] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of interests by the Plans and IRAs in the Group Trust and in the Fund violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

duration of an investment may be limited to 10 years.

Ivy, as the investment manager of the Fund, makes all investment decisions for the Fund. As of June 30, 2008, the approximate fair market value of the Fund's portfolio was $2,425,200.

4. As investment manager for the Fund, Ivy has received a quarterly management fee from the Fund. Ivy maintains in accordance with the provisions of section 408(b)(2) of the Act, it is entitled to payment of its fees from the holders of Class C and Class D units (which are fully disclosed in the Offering Memorandum and accompanying Adoption Agreement through which the investors purchased units of the Fund). Further, Ivy maintains that the payment of these fully disclosed fees is not subject to section 406(b) of the Act, because Ivy did not exercise any of the power that makes it a fiduciary to cause the Fund to pay it additional fees other than the fully disclosed fees which were approved by each investor at the time such investor made its investment in the Fund. It is represented that the holder of the Class E units, the Retirement Plan, paid no fees.

In addition, Ivy under certain circumstances has received performance fees from the Fund. Only holders of Class D units paid performance fees. Ivy maintains that the payment of performance fees to Ivy in connection with the Class D units is entirely consistent with the Department's advisory opinions with respect to the payment of incentive compensation. In this regard, Ivy represents that its performance fee was based on the amount by which the annualized return of the Class D units exceeded the average six (6) month U.S. Treasury rate. The annualized return of the Class D units is determined based on net asset value of each of the underlying hedge funds, as determined by the managers of those funds, each of whom was unrelated to Ivy and its affiliates. It is represented that Ivy took no part in the determination of the net asset values by the managers of the underlying hedge funds, and thus, Ivy did not determine the amount of its own compensation, which was set by external sources. It is further represented that Ivy, as part of its continuing duty as a fiduciary under the Act, routinely reviewed the valuation practices of those managers.

Ivy also has received reimbursement for research, accounting, and operating services provided to the Fund. It is represented that the fact that Ivy charged and received research, accounting, and operating services fees, along with all of its other fees, were fully disclosed in the Offering Memorandum for the class of units purchased by the investors and were approved by the fiduciaries of the plans and IRA holders as part of the investment process. The fee is variable although it is capped at 60 basis points. It is Ivy's view that this particular arrangement has been specifically approved by the Department in footnote 11 in the Notice of Proposed Exemption which ultimately became Prohibited Transaction Exemption 99–13.[19] Ivy maintains that the footnote, sets forth the Department's position that there is no prohibited transaction where a plan fiduciary charges less than or waives a particular fee that has been disclosed in writing to an independent plan fiduciary and approved by such fiduciary, and then later charges the full fee. As a holder of Class E units, the Retirement Plan does not pay any research, accounting, and operating services fees to Ivy.

It is represented that the Fund is no longer paying any fees to Ivy, because, as discussed more fully below, the Fund has been terminated.[20]

5. As an investment manager with discretion over the assets of the Plans and the assets of the IRAs that have interests in the Fund, Ivy is a fiduciary, pursuant to section 3(14)(A) of the Act. Ivy is also a party in interest and service provider, pursuant to section 3(14)(B) of the Act.

The Affiliate, as a wholly-owned subsidiary of Ivy, is a party in interest with respect to the Plans and the IRAs that have interests in the Fund, pursuant to section 3(14)(G) of the Act.

6. In view of the small size of the Fund, Ivy determined that it was in the best interest of the Unit Holders to terminate the Fund. In connection with the decision to terminate the Fund, the Fund sent a notice to each Unit Holder on October 2, 2007, informing all such Unit Holders of the termination of the Fund and of the mandatory redemption date, December 31, 2007. On December 31, 2007, the Fund was terminated.

On January 29, 2008, the Fund sent another notice to Unit Holders reiterating that Ivy had terminated the Fund, effective as of December 31, 2007, and stating that the Fund was in liquidation and that all Unit Holders were to be partially redeemed. In this regard, all Unit Holders were informed that the Fund was unable to distribute the full value of each Unit Holder's interest in the Fund, because of undistributed amounts, as described below in paragraphs 9 and 10, which are retained by the six (6) hedge funds (the Underlying Funds) in which the Fund had an interest.

The January 2008 notice further informed the Unit Holders of the intention of the Fund to sell its interest in the Shares and the Restricted Shares, provided the Department were to grant a final exemption to permit such transactions. As of the same date, the Unit Holders were also informed of Ivy's intention to enter into the Promissory Notes with each of the Unit Holders.

In addition, in the January 2008 notice, Ivy solicited and received from each Unit Holder an affirmative consent to the proposed sale of the Shares and the sale of the Restricted Shares by the Fund and to the proposed entry into the Promissory Notes between Ivy and each Unit Holder.

7. On August 6, 2008, Ivy submitted to the Department an application for an individual exemption. In this regard, Ivy has requested relief from the provisions of section 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act: (i) For the cash sale of the Shares by the Fund to Ivy, and (ii) for the cash sale of the Restricted Shares by the Fund to the Affiliate.

The sale of Shares by the Fund to Ivy and the sale of the Restricted Shares by the Fund to the Affiliate constitute violations of section 406(a)(1)(A). The subject transactions also constitute a transfer to, or use by or for the benefit of a party in interest of any assets of a plan, in violation of section 406(a)(1)(D) of the Act. The subject transactions also raise issues under the self-dealing and conflicts of interest provisions of section 406(b)(1) and 406(b)(2) of the Act, by Ivy, as a fiduciary of the assets of the Plans and the assets of the IRAs invested in the Fund.

8. Ivy has requested that the exemption be made retroactive to December 31, 2008. It is represented that on December 31, 2008, Ivy did, in fact, purchase the Shares. However, on December 31, 2008, Ivy was informed by the DE Shaw Fund that, because the DE Shaw Fund is an offshore fund, such

[19] 64 FR 4131, January 27, 1999.

[20] The Department, herein, is providing no relief from the prohibitions, as set forth in section 406 of the Act, for the receipt of fees by Ivy from the Fund, nor is the Department offering a view, as to whether the provision of services rendered by Ivy to the Fund is covered by the statutory exemption provided in section 408(b)(2) of the Act and the Department's regulations, thereunder, pursuant to 29 CFR 2550.408b–2.

Further, the Department does not concur with Ivy's conclusion that this particular fee arrangement was specifically approved by the Department in footnote 11 of the proposed exemption later finalized as PTE 99–13. Footnote 11 was limited to the need for additional disclosure where the initial disclosure noted that the fees were capped at a maximum number of basis points, but that such fees had initially been set at a lower amount, subject to later increase.

fund would not consent to the sale of the Restricted Shares to Ivy, as Ivy is a Delaware entity. Instead, effective January 1, 2009, the Affiliate purchased from the Fund the Restricted Shares of the DE Shaw Fund. Ivy engaged in the subject transactions prior to obtaining an exemption, because it believes that in view of the current economic conditions, it was in the best interest of the Unit Holders in the Fund that such Unit Holders received the cash proceeds from the sale of the Shares and the sale of the Restricted Shares, as soon as possible.

9. In connection with the decision to terminate the Fund, Ivy submitted redemption requests to each of the hedge funds in which the Fund was invested. As a result, the Fund began receiving redemption payments from such hedge funds in accordance with the private placement memorandum and other governing documents of such hedge funds. In this regard, it is represented that typically hedge funds pay redemption proceeds to a redeeming investor depending on the type of investments held by such hedge funds and the terms of the governing documents of such hedge funds. It is represented that the pace at which hedge funds pay redemption proceeds to a redeeming investor depends, for example, on whether the assets of such hedge funds are illiquid or held in a side pocket.[21] Further, during the period when the assets of such hedge funds are illiquid or held in a side pocket, such hedge funds still owe redemption proceeds to a redeeming investor. The amount due to a redeeming investor will fluctuate as a result of any market gains and losses on the assets of such hedge funds.

10. It is represented that for a variety of reasons the Underlying Funds in which the Fund, as of December 31, 2008, had an interest have not fully paid out redemption proceeds. In this regard, one of the Underlying Funds is undergoing liquidation, and another is subject to an extended redemption payment schedule. Two of the Underlying Funds have established a litigation or regulatory reserve, and another has suspended redemptions with the intention of making periodic cash distributions to investors on a *pro rata* basis, subject to anticipated reserves. The Fund's interests in these Underlying Funds constitute the Shares and the Restricted Shares which are the subject of this proposed exemption.

11. Accordingly, effective December 31, 2008, Ivy purchased the Shares from the Fund for cash, and the Affiliate purchased the Restricted Shares from the Fund for cash, so that the Fund could fully pay out its Unit Holders without requiring such Unit Holders to wait for each of the Underlying Funds to pay to the Fund the full redemption proceeds. The purchase price paid to the Fund by Ivy for the Shares equaled the value of such Shares, and the purchase price paid to the Fund by the Affiliate for the Restricted Shares equaled the value of such Restricted Shares, as reported to Fund by the Managers of the Underlying Funds, who are independent of and unrelated to Ivy and its affiliates, and as set forth on the most recent statement issued to the Fund immediately prior to the effective date of this proposed exemption. The proposed sale by the Fund of the Shares to Ivy and the proposed sale by the Fund of the Restricted Shares to the Affiliate are evidenced by purchase agreements.

12. As a result of the sale by the Fund of the Shares to Ivy and as a result of the sale by the Fund of the Restricted Shares to the Affiliate, Ivy and the Affiliate became shareholders in or creditors of the respective Underlying Funds and will receive the redemption proceeds from such Underlying Funds at such time as the redemption proceeds are paid out by such Underlying Funds. With regard to the payment of redemption proceeds by the Underlying Funds to Ivy and to the Affiliate, it is represented that Ivy entered into a Promissory Note with each of the Unit Holders of the Fund. Under the terms of each of the Promissory Notes, in the event Ivy receives with respect to the Shares, or the Affiliate receives with respect to the Restricted Shares redemption proceeds from the Underlying Funds in excess of the purchase price paid to the Fund by Ivy for the Shares and the purchase price paid by the Affiliate for the Restricted Shares, Ivy will pay, as soon as practicable after the receipt of such amounts by Ivy and the Affiliate, respectively, the entirety of such excess in cash to each Unit Holder in proportion to each such Unit Holder's investment in the Fund. It is represented that if Ivy or if the Affiliate receives redemption proceeds that are less than the purchase price paid by Ivy or by the Affiliate to the Fund, Ivy will absorb the loss.

13. It is represented that the sales transactions were in the interest of the Fund, and the Plans and IRAs which had interests in the Fund. In this regard, the Unit Holders received from the Fund a purchase price, which equaled the aggregate value of the Shares and the Restricted Shares, respectively, as reported to the Fund by the Managers of the Underlying Funds who were independent of and unrelated to Ivy and its affiliates. Further, the Unit Holders did not have to wait for the Underlying Funds to fully pay out redemption proceeds to the Fund. In this regard, the sale of the Shares to Ivy and the sale of the Restricted Shares to the Affiliate converted a potential stream of payments from the Fund to the Unit Holders into one-time payments in cash.

In addition, if the Unit Holders had had to wait until the Underlying Funds fully paid out, the redemption proceeds received by the Fund would have been subject to various administrative expenses (such as audit fees and trustee fees) applicable to any on-going pooled investment fund. Further, Unit Holders would have had to bear the market risk that the value of the assets held in the Underlying Fund, some of which are illiquid or held in a side pocket of the Underlying Funds, may have declined in value during 2009 and thereafter.

It is represented further that the entry into the Promissory Notes is in the interest of Unit Holders, because, such Promissory Notes provide that if Ivy or the Affiliate receives redemption proceeds in excess of the purchase price paid, respectively, by such parties for the Shares and the Restricted Shares, the Unit holders will receive a proportionate share of such excess. On the other hand, it is represented that if Ivy or the Affiliate receives redemption proceeds that are less than the purchase price paid, respectively, by such parties for the Shares and the Restricted Shares, Ivy will absorb the loss.

14. It is represented that the proposed sale transactions are feasible in that each such sale was a one-time transaction for cash. Further, in connection with the sale of the Shares to Ivy and the sale the Restricted Shares to the Affiliate, the Fund did not bear any commissions or transaction costs. In addition, Ivy is responsible for the costs of the exemption application and the cost of notifying interested persons.

15. It is represented that the proposed transactions are protective of the Unit Holders, because the purchase price paid by Ivy and by the Affiliate, respectively, for the Shares and the Restricted Shares, equaled the value of such Shares and Restricted Shares, as reported to the Fund by the Managers of each of the Underlying Funds, each of whom is independent of and unrelated to Ivy and its affiliates. Further, it is

[21] It is represented that particular investments made by a hedge fund which the manager of such hedge fund has determined are either difficult to value on an on-going basis or should be held until the resolution of a special event or circumstance are commonly referred to as in a ''side pocket.''

represented that the decision by a Unit Holder as to whether to engage in the proposed transactions was made: (a) In the case of a Plan, by the trustee of each such Plan; (b) in the case of an IRA, by the IRA holder, and (c) in the case of the Retirement Plan, by the Committee which serves as the named fiduciary on behalf of the Retirement Plan for investment matters. It is represented that although, a majority of the members of the Committee are officers of BNYMC, none of the members of the Committee are employed by Ivy.

16. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act and section 4975 of the Code because:

(a) The sale of the Shares to Ivy and the sale of the Restricted Shares to the Affiliate were one-time transactions for cash;

(b) The purchase price paid by Ivy for the Shares, and the purchase price paid by the Affiliate for the Restricted Shares was equal to the value of such Shares and Restricted Shares, as reported to the Fund by the Managers of each of the Underlying Funds, who are independent of and unrelated to Ivy and its affiliates, and as set forth on the most recent statement issued to the Fund immediately prior to the effective date of this proposed exemption;

(c) The Fund did not incur any commissions or transaction costs with respect to the sale of the Shares to Ivy or the sale of the Restricted Shares to the Affiliate;

(d) The decision by a Unit Holder as to whether to engage in the subject transactions was made, in the case of a Plan by the trustee of each such Plan, in the case of an IRA, by the IRA holder, and in the case of the Retirement Plan by the Committee which serves as the named fiduciary on behalf of the Retirement Plan;

(e) Ivy solicited and received from each Unit Holder an affirmative consent to the sale of the Shares and the Restricted Shares by the Fund and to the entry into the Promissory Notes;

(f) Pursuant to the terms of the Promissory Notes, in the event that Ivy or the Affiliate receives redemption proceeds with respect to the Shares and the Restricted Shares in excess of the purchase price paid to the Fund by Ivy for such Shares or the purchase price paid by the Affiliate for such Restricted Shares, Ivy will pay, as soon as practicable after receipt of such amounts, the entirety of such excess in cash to each Unit Holder in proportion to each such Unit Holder's investment in the Fund, and Ivy will absorb the loss, if the aggregate redemption proceeds are less than the purchase price paid for the Shares and the Restricted Shares;

(g) Ivy, as the investment manager of the Fund, represents that the subject transactions are appropriate for and in the interest of the Fund, and the Unit Holders which have interests in the Fund;

(h) Ivy took all appropriate actions necessary to safeguard the interests of the Fund, and the Unit Holders in the Fund, in connection with the subject transactions;

(i) Ivy will maintain, or cause to be maintained, for a period of six (6) years from the date of any of the subject transactions such records as are necessary to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include the trustees of each of the Unit Holders that is a Plan, the custodian of each IRA, and each of the IRA holders, and the Committee which serves as the named fiduciary for the Retirement Plan. The Applicant has not proposed providing notice to each of the participants in the Plans, because each Unit Holder has already consented to the sale to Ivy, and these are the same persons who made the decision to invest in the first place.

It is represented that each of these classes of interested persons will be notified of the publication of the Notice by mail, within fifteen (15) calendar days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment and to request a hearing.

A11 written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of November 2009.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–27404 Filed 11–13–09; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption (PTE) 2009–24; Exemption Application No. D–11465]

United States Steel and Carnegie Pension Fund (the Applicant), Located in New York, NY

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor (the Department).

ACTION: Notice of technical correction.

On September 1, 2009, the Department published PTE 2009–24 in the **Federal Register** at 74 FR 45294. PTE 2009–24 permits transactions between parties in interest with respect to the Former U.S. Steel Related Plans, as defined in PTE 2009–24, and an investment fund in which such plans have an interest, provided that the Applicant or its successor has discretionary authority or control with respect to the plan assets involved in the transaction, and various enumerated conditions are satisfied.

Due to a technical error appearing in the final exemption, the Department is hereby making a revision to the document. On page 45298 of the grant notice, the first paragraph under the heading Temporary Nature of Exemption is revised to read as follows:

Temporary Nature of Exemption

The Department has determined that the relief provided by this exemption is temporary in nature. The exemption is effective February 15, 2003, and will expire on the day which is five (5) years from the first day of the first fiscal year of UCF after the date of the publication of the final exemption in the **Federal Register** (*i.e.,* September 1, 2009). Accordingly, the relief provided by this exemption will not be available upon the expiration of such five-year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such five-year period for continuing transactions entered into before the expiration of the five-year period. Should the Applicant wish to extend, beyond the expiration of such five-year period, the relief provided by this exemption to new or additional transactions, the Applicant may submit another application for exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department at (202) 693–8546. (This is not a toll-free number.)

Signed at Washington, DC, this 10th day of November 2009.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–27403 Filed 11–13–09; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: PTE 2009–29, Iron Workers Local 17 Pension Fun (the Plan), D–11432, et al.

PTE 2009–29, Iron Workers Local 17 Pension Fun (the Plan), D–11432;

PTE 2009–30, Urology Clinics of North Texas, P,A. 401(k) Profit Sharing Plan and Trust (The Plan), D–11483;

PTE 2009–31, Amendment to Prohibited Transaction Exemption (PTE) 96–22, 61 FR 14828 (April 3, 1996), as amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007) as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05), (PTE 96–22), Involving the Wachovia Corporation and its affiliates (Wachovia), the Successor of First Union Corporation and to PTE 2002–19, 67 FR 14979 (March 28, 2002), as amended by PTE 2007–05 and PTE 2009–16, 74 FR 30623 (June 26, 2009) (PTE 2002–19), Involving J.P. Morgan Chase & Company and Its Affiliates, D–11530;

PTE 2009–32, The Alaska Laborers-Construction Industry Apprenticeship Training Trust (the Plan), L–11482.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Iron Workers Local 17 Pension Fund (the Plan) Located in Cleveland, Ohio

[Prohibited Transaction Exemption 2009–29; Exemption Application No. D–11432]

Exemption

The restrictions in sections 406(a)(1)(A), 406(a)(1)(D), and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(D) through (E) of the Code, shall not apply to the sale of a leasehold interest, which includes an office building (the Building) and certain rights pursuant to a ground lease, held by the Plan, to the Bridge, Structural and Ornamental Iron Workers Local Union No. 17 (the Union), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The terms and conditions of the sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated party;

(b) The Plan receives the greater of $285,000 or the fair market value of the

Building and lot on which the Building is located (the Lot), as of the date of the sale, as determined by a qualified, independent appraiser;

(c) The sale is a one-time transaction for cash;

(d) The Plan pays no commissions, costs, or other expenses in connection with the sale (other than fees associated with the retention of a qualified, independent appraiser and the retention of a qualified, independent fiduciary);

(e) The Board of Trustees retains a qualified, independent fiduciary, who will review and approve the methodology used by the qualified, independent appraiser, will ensure that such methodology is properly applied in determining the fair market value of the Building and Lot as of the date of the sale, and will determine whether it is prudent to go forward with the proposed transaction; and

(f) Prior to the publication of this final exemption in the **Federal Register** regarding the subject transaction, the Union: (i) Filed Form 5330 (Return of Excise Taxes Related to Employee Benefit Plans) with the Internal Revenue Service (IRS) and paid all applicable excise taxes due by reason of its prohibited past leasing to the Plan of the Lot on which the subject Building was constructed by the Plan; and (ii) provided the Department with copies of Form 5330 and of the checks submitted to the IRS indicating that the taxes were correctly computed and paid.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 26, 2009 at 74 FR 30631.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

Urology Clinics of North Texas, P.A. 401(k) Profit Sharing Plan and Trust (The Plan) Located in Dallas, TX

Prohibited Transaction Exemption 2009–30; [Application No. D–11483]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, will not apply to the proposed sale (the Sale) of a 2.52 percent ownership interest comprising 5.55 Class I Units issued by the Center for Pediatric Surgery (CPS) and a 2.52 percent ownership interest comprising 5.55 Class I Units of the Center of Pediatric Surgery, LLC (CPS LLC) (collectively the ''Units''), unrelated parties with respect to the Plan, by the individually directed account in the Plan (the Account) of David Ewalt, M.D. (Dr. Ewalt), to Dr. Ewalt, a party in interest with respect to the Plan.

This exemption is subject to the following conditions:

(a) The Sale is a one-time transaction for cash;

(b) the closing date of the Sale (the Closing Date) occurs within 60 days of the Department's publication of the grant of the final exemption in the **Federal Register**;

(c) the Units are sold to Dr. Ewalt at the greater of the fair market value of the Units as of the Closing Date, as determined by a qualified, independent appraiser or for $441,000 for the 2.52 percent ownership interest in CPS and the 2.52 percent ownership interest in CPS LLC;

(d) in addition to the sale price described above, the Account will have received $408,954.00 in consideration for the reduction of the Account's interest in CPS and CPS LLC as a result of an investment by Cook Children's Health Care System (Cook) in CPS and CPS LLC;

(e) the proceeds from the Sale are credited to the Account simultaneously with the transfer of the Units' title to Dr. Ewalt;

(f) neither the Plan nor the Account pay any fees, commissions, or other costs or expenses associated with the Sale; and

(g) the terms and conditions of the Sale remain at least as favorable to the Account as the terms and conditions obtainable under similar circumstances negotiated at arm's length with an unrelated party.

Effective Date: This exemption is effective as of the date of publication of this exemption in the **Federal Register**.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing. During the comment period, the Department received no requests for a hearing. The Department received comments from the Applicant dated July 24, 2009, August 21, 2009 and September 2, 2009. The Applicant cited the following issues with regard to the Notice.

In its July 24, 2009 and August 21, 2009 comments, the Applicant supplemented its original application with additional facts. First, the Applicant explained that in addition to its 2.52 percent ownership interest in CPS, the Account also held an identical 2.52 percent ownership interest in the Center for Pediatric Surgery, LLC, (CPS LLC) a Texas limited liability company which is the general partner of CPS. The Board of Managers of CPS LLC, in accordance with the governing documents of CPS, acts as the governing body for CPS and CPS LLC. In addition, the operative language of the final exemption now reflects the additional information submitted in the comments.

The Applicant submitted a supplemental appraisal from Vincent Kickirillo (the Appraiser) of VMG Health, LLC dated August 21, 2009. The Appraiser reviewed both the 2.52 percent interest in CPS and the 2.52 interest in CPS LLC and based his valuation on the division of income between CPS and CPS LLC. The income and profits generated by CPS' and CPS LLC's pediatric services remain unchanged from earlier valuations. CPS LLC, as a distinct legal entity, does not generate any income or losses. For tax purposes, CPS receives 99.55% and CPS LLC receives .45% of the total profits from their pediatric business. The Appraiser valued the 2.52 percent interest (or 5.55 Units in CPS) at $439,005.00 and the 2.52 percent interest (or 5.55 Units in CPS LLC) at $1,995.00. Therefore, the Appraiser represented that the Account's 2.52 interest in CPS and 2.52 percent interest in CPS LLC resulted in a value of $441,000.00.

Finally, on September 2, 2009, the Applicant clarified its application to note that in August 2008, the ownership of the CPS and CPS LLC was reorganized. The Account now owns a 2.52 percent ownership interest consisting of 5.55 Class I Units of CPS and a 2.52 percent ownership interest consisting of 5.55 Class I Units of CPS LLC instead of a 2.52 percent ownership interest consisting of 5 Class I Units of CPS and a 2.52 percent ownership interest consisting of 5 Class I Units of CPS LLC.

The operative language of the final exemption now reflects the additional information submitted by the Applicant. Also, the Department has revised paragraphs 7 and 8 as well as footnote 6 in the Notice.

Paragraph 7 of the Summary of Facts and Representations has been revised to read as follows:

On August 1, 2008, Cook completed a capital investment in CPS and CPS LLC that resulted in Cook's ownership of 51 percent of the aggregate ownership interest CPS and CPS LLC. Cook is not a party in interest to the Plan.

The Cook investment did not represent an actual purchase from the Account of any of the Units. Instead, the Cook investment represented an injection of capital into CPS

which resulted in the issuance of additional ownership units to Cook and dilution of the then existing investors of CPS and CPS LLC.

Paragraph 8 of the Summary of Facts and Representations has been revised to read as follows:

Prior to the investment by Cook, individual investors, including the Account, together held an 81 percent aggregate interest in CPS and CPS LLC, while the remaining 19 percent interest was held by Nuettera Holdings, LLC, (Nuettera) the entity providing business management services to CPS. Following the investment by Cook, the individual investors' aggregate interest in CPS and CPS LLC has been reduced to 44 percent respectively and the interest held by Nuettera Holdings, LLC has been reduced to five percent respectively.[6] Due to the Cook investment and the resulting dilution and reduction of the ownership of the individual investors, the Account's aggregate interest in CPS and CPS LLC decreased from 4.63 percent to 2.52 percent respectively. As consideration for this dilution of their ownership interest, the previous investors received a special cash distribution from CPS. The Account's share of this cash consideration was $408,954.00. This amount was deposited in the Account and invested in accordance with Dr. Ewalt's directions. Individual number of units in CPS and CPS LLC held by the Account increased from five to 5.55 units respectively as part of this transaction. The Applicant submitted a supplemental appraisal from the Appraiser dated August 21, 2009. The Appraiser used the division of income between CPS and CPS LLC as basis for his valuation. CPS receives 99.55% and CPS LLC receives .45% of the total profits from their pediatric business. Accordingly, the Appraiser valued the 2.52 percent interest or 5.55 Units in CPS at $439,005.00. The Appraiser valued the 2.52 percent interest or 5.55 Units in CPS LLC at $1,995.00. Finally, the Appraiser represented that the Account's 2.52 interest in CPS and 2.52 percent interest CPS LLC combined equaled $441,000.00.

Footnote 6 in the Summary of Facts and Representations has been revised to read as follows:

Nuetttera was engaged to provide management services for the surgery center. Nuettera held an ownership interest in CPS, but that interest was represented by units of a different class (Class II units) than those held by the physician practitioners who owned the remaining interests in CPS and CPS LLC (Class I units).

When Cook acquired its interest in CPS and CPS LLC in 2008, it acquired both Class I and Class II units. The dilution of Nuettera's interest in CPS and CPS LLC was proportionately greater than the dilution of the physicians' interests because Cook acquired seventy-five percent (75%) of the Class II units for CPS and CPS LLC. In contrast, the aggregate ownership of the physicians in CPS and CPS LLC was diluted by roughly fifty-four percent (54%) following the Cook investment. The reason the relative dilution of the two groups was different was a result of the fact that the two groups owned different classes of ownership units.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published in the **Federal Register** on June 26, 2009 at 74 FR 30634. Based on the entire record, the Department has determined to grant this exemption as revised herein.

For Further Information Contact: Anh-Viet Ly of the Department, telephone (202) 693–8648 (this is not a toll-free number).

Amendment to Prohibited Transaction Exemption (PTE) 96–22, 61 FR 14828 (April 3, 1996), as amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007) as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05), (PTE 96–22), Involving the Wachovia Corporation and its affiliates (Wachovia), the Successor of First Union Corporation and to PTE 2002–19, 67 FR 14979 (March 28, 2002), as amended by PTE 2007–05 and PTE 2009–16, 74 FR 30623 (June 26, 2009) (PTE 2002–19), Involving J.P. Morgan Chase & Company and Its Affiliates.

[Prohibited Transaction Exemption 2009–31; Exemption Application Number D–11530]

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department amends Prohibited Transaction Exemption (PTE) 96–22, 61 FR 14828 (April 3, 1996), as amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007) as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05), (PTE 96–22) and PTE 2002–19, 67 FR 14979 (March 28, 2002) as amended by PTE 2007–05 and PTE 2009–16, 74 FR 30623 (June 26, 2009) (PTE 2002–19).

I. Transactions

A. Effective December 31, 2008, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective December 31, 2008, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3–21(c).

by the same entity.[2] For purposes of this paragraph (iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that the conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective December 31, 2008, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer;[3] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective December 31, 2008, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(c) [(d) of PTE 2002–19] Effective December 31, 2008 through June 30, 2009, Wells Fargo, N.A., the Trustee, shall not be considered to be an Affiliate of any member of the Restricted Group solely as the result of the acquisition of Wachovia Corporation and its affiliates (Wachovia) by Wells Fargo & Company and its subsidiaries (WFC), the parent holding company of Wells Fargo, N.A. (the Acquisition), which occurred after the initial issuance of the Securities, provided that:

(i) The Trustee, Wells Fargo, N.A., ceases to be an Affiliate of any member of the Restricted Group no later than June 30, 2009;

(ii) Any member of the Restricted Group that is an Affiliate of the Trustee, Wells Fargo, N.A., did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from December 31, 2008 through the date the member of the Restricted Group ceased to be an Affiliate of the Trustee, Wells Fargo, N.A.; and

(iii) In accordance with each Pooling and Servicing Agreement, the Trustee, Wells Fargo, N.A., appoints a co-trustee, which is not an Affiliate of Wachovia or any other member of the Restricted Group, no later than the earlier of (A) March 31, 2009 or (B) five business days after Wells Fargo, N.A. becomes aware of a conflict between the Trustee and any member of the Restricted Group that is an Affiliate of the Trustee. The co-trustee will be responsible for resolving any conflict between the Trustee and any member of the Restricted Group that has become an Affiliate of the Trustee as a result of the Acquisition; provided,

[2] For purposes of this Underwriter Exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to ''prospectus'' include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

that if the Trustee has resigned on or prior to March 31, 2009 and no event described in clause (B) has occurred, no co-trustee shall be required.[4]

(iv) For purposes of this subsection II.A.(4)(c) [subsection II.A.(4)(d) of PTE 2002–19], a conflict arises whenever (A) Wachovia, as a member of the Restricted Group, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Wells Fargo, N.A., as Trustee, or (B) Wells Fargo, N.A., as Trustee, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Wachovia, a member of the Restricted Group.

The time as of which a conflict occurs is the earlier of: The day immediately following the last day on which compliance is required under the relevant Pooling and Servicing Agreement; or the day on which a party affirmatively responds that it will not comply with a request for performance.

For purposes of this subsection II.A.(4)(c) [subsection II.A.(4)(d) of PTE 2002–19], the term ''conflict'' includes but is not limited to, the following: (1) Wachovia's failure, as Sponsor, to repurchase a loan for breach of representation within the time period prescribed in the relevant Pooling and Servicing Agreement, following Wells Fargo, N.A.'s request, as Trustee, for performance; (2) Wachovia, as Sponsor, notifies Wells Fargo, N.A., as Trustee, that it will not repurchase a loan for breach of representation, following Wells Fargo, N.A.'s request that Wachovia repurchase such loan within the time period prescribed in the relevant Pooling and Servicing Agreement (the notification occurs prior to the expiration of the prescribed time period for the repurchase); and (3) Wachovia, as Swap Counterparty, makes or requests a payment based on a value of the London Interbank Offered Rate (LIBOR) that Wells Fargo, N.A., as Trustee, considers erroneous.

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency.

Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

[4] On May 7, 2009, Wells Fargo Bank, N.A. informed the Department that for all 39 of the transactions on the Securitization List at section III.KK [section III.LL of PTE 2002–19], the replacement trustees were in place as of March 31, 2009.

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A ''true sale'' of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer or any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

III. Definitions

For purposes of this exemption:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. ''Issuer'' means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2) [5]; and/or

[5] In ERISA Advisory Opinion 99–05A (Feb. 22, 1999), the Department expressed its view that

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1).[6]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) The rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term ''permitted investments'' means investments which: (i) Are either: (x) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term ''Issuer'' does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C.(1) ''Underwriter'' means:

(a) First Union;

(b) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with First Union; or

(c) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1)(a) or (b) is a manager or co-manager with respect to the Securities.

(2) Effective December 31, 2008 through June 30, 2009, ''Underwriter'' means:

(a) Wachovia or J.P. Morgan Securities Inc.;

(b) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entities; or

(c) Any member of an underwriting syndicate or selling group of which such firm or person described in subsections III.C.(2)(a) or (b) is a manager or co-manager with respect to the Securities.

D. ''Sponsor'' means:

(1) The entity that organizes an Issuer by depositing obligations therein in exchange for Securities; or

(2) Effective December 31, 2008 through June 30, 2009, for those transactions listed on the Securitization List at section III.KK. [section III.LL. of PTE 2002–19], Wachovia.

E. ''Master Servicer'' means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. ''Servicer'' means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. ''Trust'' means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. ''Trustee'' means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. ''Indenture Trustee'' means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the Servicer.

J. ''Insurer'' means the insurer or guarantor of, or provider of other credit

mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation (''Farmer Mac'') meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[6] It is the Department's view that the definition of Issuer contained in subsection III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemption generally provides relief only for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. ''Obligor'' means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, ''Obligor'' shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

M. ''Restricted Group'' with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)–(7).

N. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be ''independent'' of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

Q. ''Sale'' includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this Underwriter Exemption applicable to sales are met.

R. ''Forward Delivery Commitment'' means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. ''Reasonable Compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. ''Pooling and Servicing Agreement'' means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. ''Pooling and Servicing Agreement'' also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. ''Rating Agency'' means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.; Moody's Investors Service, Inc.; FitchRatings, Inc.; DBRS Limited, or DBRS, Inc.; or any successors thereto.

Y. ''Capitalized Interest Account'' means an Issuer account: (i) which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. ''Closing Date'' means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. ''Pre-Funding Account'' means an Issuer account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraph (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to 25 percent.

CC. ''Pre-Funding Period'' means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement; or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. ''Designated Transaction'' means a securitization transaction in which the

assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. ''Ratings Dependent Swap'' means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a ''Non-Ratings Dependent Swap''. With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. ''Eligible Swap'' means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. ''Eligible Swap Counterparty'' means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. ''Qualified Plan Investor'' means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A ''qualified professional asset manager'' (QPAM),[7] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984), as amended by 70 FR 49305 (August 23, 2005);

(2) An ''in-house asset manager'' (INHAM),[8] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. ''Excess Spread'' means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. ''Eligible Yield Supplement Agreement'' means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not ''leveraged'' as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which such agreement or arrangement

[7] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $85 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[8] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

KK. [LL. Of PTE 2002–19] Effective December 31, 2008 through June 30, 2009, ''Securitization List'' means:

Name	Issuance type	Wachovia role	Exemption
First Union Commercial Mortgage Trust FUNB Series 1999–C1.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Capital Markets	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C6.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C8.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2004–C10.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2004–C11.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C23.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C25.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2002–C01.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: First Union Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2002–C2.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C3.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C5.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C7.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2004–C15.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Banc of America Commercial Mortgage Trust, Series 2001–3.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Securities, Inc	96–22
First Union Commercial Mortgage Trust, Series 2001–C4.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C4.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C9.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C16.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C17.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
COBALT CMBS Commercial Mortgage Trust, Series 2006–C1.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
COBALT CMBS Commercial Mortgage Trust, Series 2007–C2.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
COBALT CMBS Commercial Mortgage Trust, Series 2007–C3.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C27.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22

Name	Issuance type	Wachovia role	Exemption
Wachovia Bank Commercial Mortgage Trust, Series 2006–C29.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C32.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series, 2005–C22.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C33.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C34.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
J.P. Morgan Chase Commercial Mortgage Securities Corp., Series 2002–C1.	CMBS	Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc. (but note that PTE 96–22 is not relied on in the disclosure document).	2002–19
Wachovia Bank Commercial Mortgage Trust, Series 2006 WHALE 7.	CMBS	Servicer: Wachovia Bank, N.A Special Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C21.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C19.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C26.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C28.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C30.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C31.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–ESH.	CMBS	Master Servicer: Wachovia Bank, N.A Special Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–WHALE 6.	CMBS	Servicer: Wachovia Bank, N.A Special Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
First Union—Lehman Brothers Wells Fargo, Series 1998–C2.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Capital Markets	96–22

Legend: CMBS = Commercial mortgage-backed securitizations.

Effective Date: This amendment was effective December 31, 2008.

For a more complete statement of the facts and representations supporting the Department's decision to amend PTE 96–22 and PTE 2002–19, refer to the notice of proposed exemption that was published on August 28, 2009 in the **Federal Register** at 74 FR 44387.

For Further Information Contact: Wendy M. McColough of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

The Alaska Laborers-Construction Industry Apprenticeship Training Trust (the Plan) Located in Seattle, WA

[Prohibited Transaction Exemption 2009–32; Exemption Application No. L–11482]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the purchase by the Plan of certain unimproved real property (the Property) from the Alaska Construction & General Laborers 942 Building Association, Inc. (the Building Association), an entity owned by Local 942, Laborers International Union of North America, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The terms and conditions of the proposed transaction are no less favorable to the Plan than those which the Plan would receive in an arm's length transaction with an unrelated party.

(b) The purchase of the Property is a one-time transaction for cash.

(c) The Plan does not pay any real estate commissions, fees, or other similar expenses to any party as a result of the proposed transaction.

(d) The Plan purchases the Property from the Building Association for the lesser of (1) $62,791 or (2) the fair market value of the Property as determined on the date of such transaction by a qualified, independent appraiser.

(e) The proposed transaction is consummated only after an independent fiduciary (1) determines that proceeding with the transaction is in the best interests of the Plan and its participants and beneficiaries and (2) negotiates the relevant terms and conditions of such transaction.

(f) The independent fiduciary calculates, on the date of the transaction (using the applicable certificate of deposit rate in effect), the amount of interest owed to the Plan based upon its earnest money deposit for the Property.

(g) On the date of the transaction, the Plan's legal counsel pays all interest owed the Plan resulting from counsel's placement of the Plan's earnest money deposit for the Property in a non-interest bearing account.

(h) The independent fiduciary monitors the proposed transaction on behalf of the Plan to ensure compliance with the agreed upon terms.

Written Comments

In the notice of proposed exemption, the Department invited all interested persons to submit written comments and requests for a hearing with respect to the proposed exemption within (60) sixty days of the publication of the notice of pendency in the **Federal Register** on August 28, 2009. All comments and requests for a hearing were due by October 27, 2009.

During the comment period, the Department received one written comment from a Plan participant, who expressed approval of the proposed exemption, and no requests for a public hearing. The Department also received four telephone inquiries from participants concerning the substance of the proposed transaction and the effect the exemption might have on the participants' benefits.

Accordingly, the Department has considered the entire record and has determined to grant the exemption. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 28, 2009 at 74 FR 44396.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of November 2009.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–27405 Filed 11–13–09; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, November 19, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NCUA's 2010/2011 Operating Budget.
2. NCUA's Overhead Transfer Rate.
3. NCUA's Operating Fee Scale.
4. Proposed Rule—Parts 704 and 747 of NCUA's Rules and Regulations, Corporate Credit Unions.
5. Final Rule—Parts 701 and 741 of NCUA's Rules and Regulations, National Credit Union Share Insurance Fund Premium and One Percent Deposit.
6. Insurance Fund Report.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, November 19, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Creditor Claim Appeals (2). Closed pursuant to Exemption (6).
2. Consideration of Supervisory Activities. Closed pursuant to Exemptions (8), (9)(A)(ii) and 9(B).
3. Personnel. Closed pursuant to Exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. E9–27591 Filed 11–12–09; 4:15 pm]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–

463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Materials Research Science and Engineering Center (MRSEC) at New York University by NSF Division of Materials Research (DMR) #1203.

Dates and Times:

Sunday, December 6, 2009 7 p.m.–9 p.m.
Monday, December 7, 2009 8 a.m.–4 p.m.

Place: New York University, New York, NY.

Type of Meeting: Part-open.

Contact Person: Dr. William Brittain, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–5039.

Purpose of Meeting: To provide advice and recommendations concerning progress of the MRSEC at New York University.

Agenda:

Sunday, December 6, 2009

7 p.m.–9 p.m. Closed—Executive Session.

Monday, December 7, 2009

8 a.m.–2 p.m. Open—Review of New York Univ MRSEC.

2 p.m.–4 p.m. Closed—Executive Session.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 10, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–27391 Filed 11–13–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure (25150).

Date and Time:

December 2, 2009, 11 a.m.–5 p.m.
December 3, 2009, 11 a.m.–1 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Kristen Oberright, Office of the Director, Office of Cyberinfrastructure (OD/OCI), National Science Foundation, 4201 Wilson Blvd., Suite 1145, Arlington, VA 22230, Telephone: 703–292–8970.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CI community. To provide advice to the Director/NSF on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Director. Discussion of CI research initiatives, education, diversity, workforce issues in CI and long-range funding outlook.

Dated: November 10, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–27392 Filed 11–13–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Subcommittee on Facilities of the Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), 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 National Science Board business and other matters specified, as follows:

DATE AND TIME: Thursday, November 19, 2009 from 3 p.m. to 4 p.m.

SUBJECT MATTER: Chairman's Remarks, Discussion of NSF Portfolio Review Materials, December NSB Meeting, and Next Steps.

STATUS: Open.

PLACE: This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. Room 130 will be held available to the public to listen to this teleconference meeting.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for information or schedule updates, or contact: Elizabeth Strickland, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Ferrante,

Technical Writer/Editor.

[FR Doc. E9–27580 Filed 11–12–09; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0499; Docket No. 030–22168]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 06–20971–01, for Unrestricted Release of the Eastern Connecticut State University's Facility in Willimantic, CT

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Senior Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 10406; telephone (610) 337–5040; fax number (610) 337–5269; or by e-mail: *elizabeth.ullrich@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 06–20971–01. This license is held by Eastern Connecticut State University (the Licensee), for its campus located in Willimantic, Connecticut. Issuance of the amendment would authorize release of two campus facilities, Goddard Hall and the Media Center, for unrestricted use. The Licensee requested this action in a letter dated May 18, 2009. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's May 18, 2009, license amendment request, resulting in release of Goddard Hall and the Media Center for unrestricted use. License No. 06–20971–01 was issued on March 18, 1986, pursuant to 10 CFR part 30, and has been amended periodically since

that time. This license authorizes the Licensee to use unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods, and the teaching and training of students.

Goddard Hall is a multi-story building situated on approximately 8,300 square feet of land. The Media Center is a multi-story building situated on approximately 13,000 square feet of land. Both buildings contain office space, classroom space, and laboratories. Goddard Hall and the Media Center are located in a residential area. The use of licensed materials was confined to four rooms in Goddard Hall (a total of approximately 2,600 square feet of space) and five rooms in the Media Center (a total of approximately 1,300 square feet of space).

In February 2008, the Licensee ceased licensed activities in Goddard Hall and the Media Center, and initiated a survey and decontamination of Goddard Hall and the Media Center. Based on the Licensee's historical knowledge of the site and the conditions of the Goddard Hall and the Media Center, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of Goddard Hall and the Media Center and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities in Goddard Hall and the Media Center, and seeks the unrestricted use of these buildings.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted in Goddard Hall and the Media Center shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3, carbon-14, several generally-licensed sealed sources, and several exempt sealed sources. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of Goddard Hall and the Media Center affected by these radionuclides. The Licensee conducted a final status survey on June 29, July 7, 13, and 14, 2009. This survey covered all rooms in Goddard Hall and the Media Center where licensed materials were used or stored. The final status survey report was attached to the Licensee's letter dated July 24, 2009. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material in Goddard Hall and the Media Center. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding Goddard Hall and the Media Center. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of Goddard Hall and the Media Center for unrestricted use is in compliance with 10 CFR 20.1402. Because the Licensee will continue to perform licensed activities in other campus facilities, the Licensee must ensure that Goddard Hall and the Media Center do not later become recontaminated. Before the license can be terminated, the Licensee will be required to show that the all campus facilities, including previously-released areas, comply with the radiological criteria in 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity in Goddard Hall and the Media Center and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of separate buildings containing byproduct material be completed and approved by the NRC after licensed activities in those separate buildings cease. The NRC's analysis of the Licensee's final status survey data confirmed that Goddard Hall and the Media Center meet the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of Connecticut Department of Environmental Protection for review on August 3, 2009. On September 10, 2009, the State of Connecticut Department of Environmental Protection responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7

of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

[1]. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''

[2]. Title 10, Code of Federal Regulations, part 20, subpart E, ''Radiological Criteria for License Termination;''

[3]. Title 10, Code of Federal Regulations, part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''

[4]. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;'' and

[5]. Licensee letters dated May 18, 2009 (ML091470608) and July 24, 2009 (ML092090686).

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia, PA, this 6th day of November 2009.

For the Nuclear Regulatory Commission.

James Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E9–27424 Filed 11–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATES: Week of November 16, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of November 16, 2009

Tuesday, November 17, 2009

9:25 a.m. Affirmation Session (Public Meeting) (Tentative).

a. Detroit Edison Co. (Fermi Nuclear Power Plant, Unit 3), LBP–09–16 (July 31, 2009) (Ruling on Standing and Contention Admissibility) (Tentative).

b. In the Matter of David Geisen, Docket No. IA–05–052; Staff Application for Stay of the Effectiveness of LBP–09–24 Pending Commission Review (Tentative).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: November 10, 2009.

Richard J. Laufer,

Office of the Secretary.

[FR Doc. E9–27528 Filed 11–12–09; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2010–9 and CP2010–9; Order No. 336]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 23 to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: 1. Supplemental information from the Postal Service is due: November 13, 2009. 2. Comments are due: November 17, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in ''FOR FURTHER INFORMATION CONTACT'' by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Notice of Filings
III. Supplemental Information
IV. Ordering Paragraphs

I. Introduction

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 23 to the Competitive

Product List.[1] The Postal Service asserts that Priority Mail Contract 23 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). The Postal Service states that prices and classification underlying this contract are supported by Governors' Decision No. 09–06 in Docket No. MC2009–25. *Id.* at 1. The Request has been assigned Docket No. MC2010–9.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2010–9.

Request. In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision, originally filed in Docket No. MC2010–25, authorizing certain Priority Mail contracts;[2] (2) a redacted version of the contract;[3] (3) a requested change in the Competitive Product List;[4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] (5) a certification of compliance with 39 U.S.C. 3633(a);[6] and (6) an application for non-public treatment of the materials filed under seal.[7]

In the Statement of Supporting Justification, Mary Prince Anderson, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Priority Mail Contract 23 is included with the Request. The contract will become effective on the day that the Commission provides all necessary regulatory approvals. It is terminable upon 30 days' notice by either party, but could continue for up to 1 year. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *See id.*, Attachment D. The Postal Service will provide Priority Mail packaging for items mailed by the shipper.

The Postal Service filed much of the supporting materials, including the specific Priority Mail Contract 23, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, cost data, and financial projections should remain under seal. *Id.* at 2. It also requests that the Commission order that the duration of such treatment of all customer identifying information be extended indefinitely, instead of ending after 10 years. *Id.*, Attachment F, at 1 and 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2010–9 and CP2010–9 for consideration of the Request pertaining to the proposed Priority Mail Contract 23 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020, subpart B. Comments are due no later than November 17, 2009. The public portions of these filings can be accessed via the Commission's Web site *(http://www.prc.gov)*.

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

III. Supplemental Information

The Request does not indicate whether the instant contract is intended to replace an existing contract. The Postal Service should clarify the Request, identifying, if appropriate, the contract being terminated. Clarification is due no later than November 13, 2009.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2010–9 and CP2010–9 for consideration of the matter raised in each docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Clarification of the Request is due no later than November 13, 2009.

4. Comments by interested persons in these proceedings are due no later than November 17, 2009.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–27377 Filed 11–13–09; 8:45 am]

BILLING CODE 7710–FW–S

[1] Request of the United States Postal Service to Add Priority Mail Contract 23 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, November 5, 2009 (Request).

[2] Attachment A to the Request, reflecting Governors' Decision No. 09–06, April 27, 2009.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] Attachment F to the Request.

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb appendix, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Tuesday, December 8, 2009, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to approve minutes of previous Board meetings, to approve a capital project, to provide a Finance and Audit Committee report, to provide a Main Post update, to provide an update of the Visitor Center planning process, to receive an update from the Doyle Drive Project Team on the status of the project, to provide an Executive Director's report, and to receive public comment on other matters in accordance with the Trust's Public Outreach Policy.

Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415–561–5300 prior to December 1, 2009.

Time: The meeting will begin at 6:30 p.m. on Tuesday, December 8, 2009.

ADDRESSES: The meeting will be held at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415.561.5300.

Dated: November 6, 2009.

Karen A. Cook,

General Counsel.

[FR Doc. E9–27390 Filed 11–13–09; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [74 FR 57718, November 9, 2009].

STATUS: Closed meeting.

PLACE: 100 F Street, NE.,Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: November 12, 2009 at 2 p.m.

CHANGE IN THE MEETING: Additional Item.

The following matter will also be considered during the 2 p.m. closed meeting scheduled for Thursday, November 12, 2009, at 2 p.m.: Consideration of Amicus participation.

Commissioner Paredes, as duty officer, voted to consider the item listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

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 10, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–27443 Filed 11–12–09; 11:15 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 19, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c), (3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, 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 19, 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 12, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–27537 Filed 11–12–09; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice.

SUMMARY: The Department is publishing guidance to U.S. and certain foreign air carriers on inflation adjustments to liability limits of air carriers and foreign air carriers under the Montreal Convention.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Attorney, Office of Aviation Enforcement and Proceedings (C–70), 1200 New Jersey Ave., SE., Washington, DC 20590, (202) 366–9349.

SUPPLEMENTARY INFORMATION: This notice provides guidance to U.S. and certain foreign air carriers on inflation adjustments to liability limits of air carriers and foreign air carriers under the Montreal Convention (Convention).[1] The adjustments affect limits on liability for damages for passenger death or injury, delay in passenger's arrival, and the loss, delay or damage to baggage or cargo, increasing those limits by approximately 13 percent and will be effective in December 2009. The U.S. and foreign air carriers affected by these changes to the Convention include those providing international carriage between countries that, like the United States, are parties to the Convention, and all who provide round trip foreign air transportation that originates and terminates in the United States.

The liability limits are those set out in Articles 21 and 22 of the Montreal Convention. Under Article 24 of the Convention, ICAO is to review those limits every five years in light of inflation that has occurred during that period. In a note of June 30, 2009, the Secretary General of ICAO advised parties to the Convention of revisions required pursuant to this review. These revisions are as follows, stated in Special Drawing Rights (SDRs):[2]: for destruction, loss, damage or delay of cargo 19 per kilogram (currently 17); for destruction, loss, damage, or delay of baggage, per passenger, 1,131 (currently 1,000); for delay in carriage of passengers, 4,694 (currently 4,150); ''strict liability'' for death or bodily injury to passengers, 113,100 (currently 100,000). The revised amounts reflect inflation between 2003 and 2008 in the countries whose currencies comprise the SDR.

Pursuant to the terms of Article 24, the increased limits will take effect six months following the notice referred to above, or December 30, 2009. Carriers should, therefore, revise their contracts of carriage, tariffs, required notices, and practices to conform to the Convention's requirements. Failure to implement in a timely manner the revised liability limits and required notices would, in the view of the Aviation Enforcement Office, constitute an unfair or deceptive business practice and unfair method of competition in violation of 49 U.S.C. 41712. This disclosure guidance, it should be noted, also extends to ticket agents and indirect air carriers. Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C–70), U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590.

[1] *Convention for the Unification of Certain Rules for International Carriage by Air*, done at Montreal on May 28, 1999.

[2] The SDR, an international reserve asset, is a defined basket of major currencies periodically reviewed by the International Monetary Fund to reflect the relative importance of the constituent currencies. As of October 28, 2009, the U.S. dollar value of the SDR was $1.58.

Dated: November 9, 2009.

An electronic version of this document is available at *http://www.regulations.gov*.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. E9–27386 Filed 11–13–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review; Part 249 Preservation of Records

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS requiring certificated air carriers to preserve accounting records, consumer complaint letters, reservation reports and records, system reports of aircraft movements, etc. Also, Public charter operators and overseas military personnel charter operators are required to retain certain contracts, invoices, receipts, bank records and reservation records.

DATES: Written comments should be submitted by January 15, 2010.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room E34–409, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or EMAIL *bernard.stankus@dot.gov*.

Comments: Comments should identify the associated OMB approval # 2138–0006 and Docket—RITA 2008–0002. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0006, Docket—RITA 2008–0002. The postcard will be date/time stamped and returned.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0006.

Title: Preservation of Air Carrier Records—14 CFR Part 249.

Form No.: None.

Type of Review: Extension of a currently approved recordkeeping requirement.

Respondents: Certificated air carriers and charter operators.

Number of Respondents: 90 certificated air carriers; 300 charter operators.

Estimated Time per Response: 3 hours per certificated air carrier; 1 hour per charter operator.

Total Annual Burden: 570 hours.

Needs and Uses: Part 249 requires the retention of records such as: general and subsidiary ledgers, journals and journal vouchers, voucher distribution registers, accounts receivable and payable journals and legers, subsidy records documenting underlying financial and statistical reports to DOT, funds reports, consumer records, sales reports, auditors' and flight coupons, air waybills, etc. Depending on the nature of the document, the carrier may be required to retain the document for a period of 30 days to 3 years. Public charter operators and overseas military personnel charter operators must retain documents which evidence or reflect deposits made by each charter participant and commissions received by, paid to, or deducted by travel agents, and all statements, invoices, bills and receipts from suppliers or furnishers of goods and services in connection with the tour or charter. These records are retained for 6 months after completion of the charter program.

Not only is it imperative that carriers and charter operators retain source documentation, but it is critical that we ensure that DOT has access to these records. Given DOT's established information needs for such reports, the underlying support documentation must be retained for a reasonable period of time. Absent the retention requirements, the support for such reports may or may not exist for audit/validation purposes and the relevance and usefulness of the carrier submissions would be impaired, since the data could not be verified to the source on a test basis.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Anne Suissa,

Director, Office of Airline Information.

[FR Doc. E9–27408 Filed 11–13–09; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review; Passenger Origin-Destination Survey Report

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting a sample of airline passenger itineraries with the dollar value of the passenger ticket. Certificated air carriers that operated scheduled passenger service with at least one aircraft having a seating capacity of over 60 seats report these data. Comments are requested concerning whether: (a) The collection is still needed by the Department of Transportation; (b) BTS accurately estimates the reporting burden; (c) there are other ways to enhance the quality, utility and clarity of the information collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by January 15, 2010.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room E34–409, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov*.

Comments: Comments should identify the associated OMB approval # 2139–0001 and Docket ID Number RITA 2008–0002. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped

postcard on which the following statement is made: Comments on OMB # 2139–0001, Docket—RITA 2008–0002. The postcard will be date/time stamped and returned.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2139–0001.

Title: Passenger Origin-Destination Survey Report.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers that provide scheduled passenger service.

Number of Respondents: 35 certificated air carriers.

Number of Responses: 140.

Estimated Time per Response: 240 hours.

Total Annual Burden: 33,600 hours.

Needs and Uses: Survey data are used in monitoring the airline industry, negotiating international agreements, reviewing requests for the grant of anti-trust immunity for air carrier alliance agreements, selecting new international routes, selecting U.S. carriers to operate limited entry foreign routes, and modeling the spread of contagious diseases.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Anne Suissa,

Director, Office of Airline Information.

[FR Doc. E9–27420 Filed 11–13–09; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

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

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before December 1, 2009.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

For Further Information: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 6, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
Modification Special Permits				
11967–M		Savage Services Corporation Pottstown, PA.	49 CFR 174.67 (i), (j)	To modify the special permit to authorize additional Class 2,3 4, 5, 8, and 9 hazardous materials.
12398–M		Praxair, Inc. Danbury, CT.	49 CFR 173.34(d); 178.35(e).	To modify the special permit to authorize the removal of the words ''for ammonia'' in paragraph 2.a. for clarification.
I4891–M		The Boeing Company Huntington Beach, CA.	49 CFR 173.62, 173.220 and 173.185.	To reissue the special permit originally issued on an emergency basis to the one-time, one-way transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft and to modify the special permit to allow the vehicle to be transported with a full tank of gas.

[FR Doc. E9–27352 Filed 11–13–09; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

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

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 16, 2009.

Address Comments to: Record Center, Pipeline and Hazardous Materials, Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5 117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 6, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		New Special Permits		
14932–N		TUV Rheinland Taiwan Ltd., Kaohsiung.	49 CFR 173.302a 173.304a and 180.209.	To authorize the manufacture, marking, sale, and use of non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders for the transportation in commerce of certain compressed gases. (modes 1, 2, 3, 4, 5).
14933–N		Tobin Scientific a division of Tobin & Sons Moving and Storage, Inc., Peabody, MA.	49 CFR 173.196	To authorize the transportation in commerce of certain Division 6.2 infectious substances packaged in portable Dewar flask cryogenic shipping containers, insulated liquid nitrogen refrigerated portable tanks, and automatic fill plug-in liquid nitrogen freezers by highway. (mode 1).
14934–N		Saint Louis University, St. Louis, MO.	49 CFR 173.196	To authorize the transportation in commerce of certain infectious substances in alterantive packaging (freezers) by highway. (mode 1).
14935–N		E.I. DuPont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.29 and 173.242.	To authorize the one-way transportation in commerce of certain portable tanks and intermediate bulk containers containing the residue of a Class 3 hazardous material for cleaning so they can be repaired. (mode 1).
14937–N		Sears National Calibration Laboratory, Garland, TX.	49 CFR 180.213	To authorize the transportation in commerce of certain cylinders that have requalifier markings on a label embedded in epoxy instead of stamping. (mode 1).
14938–N		EP Container, Cerritos, CA.	49 CFR 173.12(b)(2)	To authorize the manufacture, marking, sale, and use of a UN standard 4G fiberboard box for use as the outer packaging for lab pack applications in accordance with § 173.12(b). (modes 1, 3).
14939–N		EP Container, Cerritos, CA.	49 CFR 173.12(b)(2)	To authorize the manufacture, marking, sale, and use of a UN standard 11 G fiberboard TBC for use as the outer packaging for lab pack applications in accordance with § 173.12(b). (modes 1, 3).
14940–N		Crown Aerosol Packaging, Philadelphia, PA.	49 CFR 173.306	To authorize the manufacture, marking, sale and use of non-DOT specification cans similar to a DOT 2P or 2Q inner metal receptacle except for wall thickness for the transportation in commerce of certain compressed gases. (mode 1).
14941–N		Columbia Analytical Services, Kelso, WA.	49 CFR 173.4a	To authorize the transportation in commerce of small quantities of Class 3 and Class 8 hazardous materials as excepted quantities under 49 CFR 173.4a except that the packagings were tested without the inner packagings being filled to 98% capacity. (modes 1, 4).

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14944–N	.....	Dean Foods Corporation, Broomfield, CO.	49 CFR 178.33b	To authorize the transportation of Specification 2S inner nonrefillable plastic receptacles containing an aerosol food product that was testing using a modified test protocol. (modes 1, 4, 5).

[FR Doc. E9–27351 Filed 11–13–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0204 (PD–33 (F))]

City of Boston Requirements for Highway Routing of Certain Hazardous Materials

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (DOT).

ACTION: Notice of administrative determination of preemption.

Applicants: American Trucking Associations, Inc. and Massachusetts Department of Highways.

Local Laws Affected: Massachusetts Ordinances of 1979, Chapter 39, Document 78; the City of Boston Regulations Controlling the Transportation of Hazardous Materials, and the Traffic Rules and Regulations of the City of Boston.

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* and FMCSA regulations at 49 CFR part 397.

SUMMARY: Federal hazardous material transportation law preempts the following highway routing designations of the City of Boston Regulations Controlling the Transportation of Hazardous Materials:

1. The Traffic Rules and Regulations of the City of Boston, Article VII, section 8B, Hazardous Materials Route; and

2. The *de facto* ban on hazardous materials transportation through the City of Boston due to the change in administration of the City's hazardous materials permitting system.

DATES: *Effective Date:* This preemption decision is effective on May 17, 2010.

Petitions for Reconsideration of this preemption decision must be submitted to the FMCSA Administrator no later than December 7, 2009.

FOR FURTHER INFORMATION CONTACT: James Simmons, Chief, Hazardous Materials Division (MC–ECH), (202) 493–0496, FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590, or at *james.simmons@dot.gov*, or Charles Fromm, Assistant Chief Counsel, Office of Chief Counsel, Enforcement and Litigation Division (MC–CCE), (202) 366–3551, FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590, or at *charles.fromm@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

American Trucking Associations, Inc. (ATA) and the Massachusetts Department of Highways (Mass Highway) applied for an administrative determination concerning whether Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* and FMCSA regulations at 49 CFR part 397 preempt certain hazardous material routing requirements that have been established or modified by the City of Boston (the City or Boston). The FMCSA published notice of ATA's application in the **Federal Register** on August 8, 2008. 73 FR 46349. The FMCSA published notice of Mass Highways' application in the **Federal Register** on September 2, 2008. 73 FR 51335. Both applications were consolidated into one docket because of their overlapping issues. Comments and rebuttal comments were received on the consolidated docket on or before December 1, 2008.[1] FMCSA received 17 comments and one rebuttal comment generally or specifically in support of the position that the City of Boston should have complied with the current Federal regulations regarding hazardous material highway routing designations but failed to do so. One comment and one rebuttal comment were received, both from the City of Boston, arguing that the City of Boston's hazardous material routing designations were in compliance with applicable statutes and should not be preempted. On March 3, 2009, the FMCSA published a notice of delay in making the preemption decision to allow additional time for fact-finding and legal analysis of the issues raised in the preemption applications. 74 FR 9328.

ATA's preemption application submits that the City of Boston made two impermissible hazardous material routing designations regarding the transportation of non-radioactive hazardous material (NRHM).[2] The first is a change in the designated hazardous material route that resulted from construction of the Central Artery Tunnel (CA/T), also known as ''the Big Dig,'' in downtown Boston. The second is a change in Boston's administration and use of its hazardous material permitting program.

With respect to the City's hazardous material route change, ATA alleges that Boston did not properly comply with Federal requirements, discussed herein, for the establishment or modification of a hazardous material route when the City began enforcing a new hazardous material route on July 3, 2006. Due to various road changes stemming from the Big Dig construction project, the City altered its hazardous material route by amending a section of the City of Boston Traffic Rules and Regulations. This route change relates to transportation of certain hazardous materials for vehicles having a point of origin or destination within the City of Boston.[3] The practical effect of the route change is to move hazardous material vehicle traffic from Commercial Street to Cross Street in downtown Boston. According to comments from the City of Boston (Boston Comments), this shift in route is one roadway over and was done to

[1] Comments and/or rebuttal comments were received from the following: American Trucking Associations, Associated Industries of Massachusetts, Brewer Petroleum Service, Inc., C. White and Son Inc., City of Boston, Dangerous Goods Advisory Council, Dennis K. Burke, Inc., DJ Cronin, Institute of Makers of Explosives, J&S Transport Co., Inc., J.P. Noonan Transportation, Inc., Lighter Association, Inc., Massachusetts Motor Transportation Association, Massachusetts Oilheat Council, National Tank Truck Carriers, Inc., P.J. Murphy Transportation, Inc., Salvoni Transportation and Triumvirate Environmental Incorporated.

[2] NRHM is defined at 49 CFR 397.65 as ''[a] non-radioactive hazardous material transported by motor vehicle in types and quantities which require placarding, pursuant to Table 1 or 2 of 49 CFR 172.504.''

[3] Presumably, this same route would also be used for any hazardous materials vehicles authorized by permit to travel through the City of Boston, in addition to those vehicles with a point of origin or destination within the City. As discussed below, however, the City has not issued any permits for through transportation of hazardous material since the route change took effect, so it is unclear which routes would be approved for through transportation.

utilize an improved and more direct route on Cross Street.[4]

ATA alleges that because the new route was not part of the City's previously designated hazardous material route, the change in route designation requires the City to comply with current Federal standards regarding the designation of hazardous material routes, pursuant to the terms of 49 CFR part 397, subpart C.

Mass Highway's preemption application notes that the City of Boston has made a change in its hazardous material route from Commercial Street to Cross Street, but Mass Highway has not taken a position as to whether this route modification requires Boston to comply with the standards set forth in 49 CFR part 397. Rather, Mass Highway's application seeks guidance from FMCSA as to the effect that this route change, as well as other issues, have on City and State obligations under Federal statutory and regulatory requirements relating to hazardous material routing designations.

As a second basis for challenging the City's route designation, ATA alleges that Boston improperly created a new *de facto* hazardous material routing designation by the change in administration and enforcement of the City's permit system for ''through'' transportation by motor carriers transporting NRHM, *i.e.,* vehicles that do not have a point of origin or destination within the City. ATA submits that the permit system is being administered in a manner that effectively bans the through transportation of hazardous material. ATA argues that Boston previously issued permits to motor carriers that wished to transport hazardous material through the City. In 2006, the City revised the manner in which through permits would be evaluated and issued. Although the original permit system still exists, ATA submits that authorization for permits to allow hazardous material transportation through the City is no longer being granted. The Mass Highway application for a preemption determination, as well as comments from the City of Boston, state that the City began to enforce its hazardous material regulations more strictly in light of security concerns following the September 11, 2001 terrorist attacks. Part of this increased enforcement included changes to the renewal and issuance of permits for motor carriers seeking permission to transport hazardous material through the City. Mass Highway states that it has conferred with City of Boston officials and verified that no new through-permits have been issued in the past several years.[5]

II. Federal Preemption

Title 49 U.S.C. 5125 contains several preemption provisions. Subsection (a) provides that a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or (2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security. These two paragraphs set forth the ''Dual Compliance'' and ''Obstacle'' criteria, which are based on U.S. Supreme Court decisions on preemption.[6] As discussed more fully below, any hazardous material highway routing designation that was established prior to, and not modified after, November 14, 1994, is ''grandfathered'' under prior Federal hazardous material transportation law. As such, pre-1994 routing designations are examined under the Dual Compliance/Obstacle test for preemption determinations.

The statutory preemption section most relevant to this proceeding is section 5125(c)(1), which allows a State or Indian tribe to establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with 49 U.S.C. 5112(b).

Section 5112(b) requires the Secretary of Transportation (''Secretary''), in consultation with the States, to prescribe by regulation standards for the States and Indian tribes to follow when designating specific highway routes for transportation of hazardous materials. The Secretary has delegated to FMCSA authority and responsibility for highway routing of hazardous material. 49 CFR 1.73(d)(2).

The standards required by 49 U.S.C. 5112(b) for establishing highway routing requirements for non-radioactive hazardous material are set forth in 49 CFR part 397, subpart C, and apply to any designations established or modified on or after November 14, 1994. 49 CFR 397.69(a). A State, political subdivision or Indian tribe must follow FMCSA standards when establishing or modifying highway routing requirements for hazardous material.

The preemption provisions in 49 U.S.C. 5125 carry out Congress's intention that a single body of uniform Federal regulations promote safety in the transportation of hazardous materials. In section 2 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101–615, November 16, 1990, 104 Stat. 3244), Congress underscored the need for uniform regulations relating to transportation of hazardous materials:

> (3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification and other regulatory requirements;
>
> (4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable;
>
> (5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal Standards for regulating the transportation of hazardous materials in intrastate, interstate and foreign commerce are necessary and desirable.

The Committee on Commerce, Science, and Transportation, U.S. Senate, when reporting in 1990 on the bill to amend the Hazardous Materials Transportation Act (HMTA) [Pub. L. 93–633 section 112(a), 88 Stat. 2161 (1975)], stated, ''[t]he original intent of HMTA was to authorize [DOT] with the regulatory and enforcement authority to

[4] The record is unclear whether the change from Commercial Street to Cross Street is the only change to the City's designated hazardous material route. ATA and several commenters reference other changes to the allowable use of various streets, for example, Massachusetts Avenue, that may also have been affected by the City's route change. Additionally, the description of the shift in route as ''one roadway over'' does not fully describe the relationship between Commercial and Cross Street, which run along opposite ends of the City's central downtown corridor, ranging from 5 to 10 blocks apart.

[5] In addition, the record does not indicate that any through-permits issued prior to 2006 are still in effect, as it appears that they were either revoked or not renewed.

[6] *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

protect the public against the risks imposed by all forms of hazardous materials transportation, and varying as well as conflicting regulations.'' S. Rep. No. 101–449 (1990), reprinted in 1990 U.S.C.C.A.N. 4595, 4596. A Federal Court of Appeals has indicated uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments expanding the original preemption provisions.[7]

III. Preemption Determinations

Title 49 U.S.C. 5125(d) provides for issuance of administrative preemption determinations regarding hazardous material by the Secretary. The Secretary has delegated to FMCSA authority to make determinations of preemption concerning highway routing of hazardous material. 49 CFR 1.73(d)(2). Any directly affected person may apply for a determination as to whether a requirement of a State, political subdivision or Indian tribe is preempted. 49 CFR 397.205(a).

The FMCSA's preemption determinations are governed by procedures in 49 CFR part 397, subpart E and 49 U.S.C. 5125. After the preemption determination is issued, aggrieved persons have 20 days to file a petition for reconsideration. 49 CFR 397.211(c) and 397.223. Any party to the proceeding may seek judicial review in the U.S. Court of Appeals for the District of Columbia Circuit or in the Court of Appeals for the circuit in which the person resides or has its principal place of business. 49 U.S.C. 5127(a).

In making preemption determinations under 49 U.S.C. 5125(d), FMCSA is guided by the principles and policies set forth in Executive Order 13132, titled ''Federalism.'' 64 FR 43255 (Aug. 4, 1999). Section 4(a) of Executive Order 13132 directs agencies to construe a Federal statute to preempt State law only when the statute contains an express preemption provision, there is other clear evidence that Congress intended preemption of State law, or the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. Section 5125 includes express preemption provisions, which FMCSA has implemented through its regulations. FMCSA is also mindful of recent Administration policy on Federal preemption contained in the President's May 20, 2009, Memorandum for the Heads of Executive Departments and Agencies, on Preemption. 74 FR 24693 (May 22, 2009).[8]

IV. Discussion

a. Background of Boston's Hazardous Material Route and Permit System

The City of Boston enacted Regulations Controlling the Transportation of Hazardous Materials (''Boston Regulations'') in December 1980, pursuant to Massachusetts Ordinances of 1979, Chapter 39, Document 78 (''Ordinance''). The Ordinance and Boston Regulations contained provisions relating to various aspects of hazardous material transportation, including time of day restrictions, prohibitions of certain transportation, designation of routes within the City for hazardous material vehicles and establishment of a permit system for motor carriers wishing to operate their vehicles outside the parameters of the Ordinance and Boston Regulations.

With respect to designation of routes, the Boston Regulations require that hazardous material be transported on designated ''Major Thoroughfares.'' Boston Regulations § 7.1.4. As explained by the City, in 2006, following substantial completion of the CA/T project, certain portions of the Major Thoroughfare System were no longer available for use by hazardous cargo vehicles because part of the surface roadway was reconstructed in a tunnel in which hazardous cargo was prohibited. In addition, upgrades were made to new surface roads, including portions of Cross Street in downtown Boston. Boston Comments at 17. In light of these and other roadway changes, the City altered the hazardous material route as designated on its Major Thoroughfare System by amending Article VII, Section 8B of the City of Boston Traffic Rules and Regulations.

ATA contends that Boston did not properly comply with federal requirements for the establishment or modification of a hazardous material route when it began enforcing this new hazardous material route on July 3, 2006. The practical effect of the route change is to move hazardous material vehicle traffic from Commercial Street to Cross Street. According to the City, this shift in route is one roadway over and was done to utilize an improved and more direct route on Cross Street. In 2006, the City issued the following notification regarding the new route:

Notice of Hazardous Materials Route Change

The Traffic Rules and Regulations of the City of Boston are hereby amended by inserting into Article VII,

''Section 8B, Hazardous Materials Route:

No person shall operate a vehicle and no person shall allow, permit, or suffer a vehicle leased by him or registered in his name to be operated, transporting any hazardous materials other than on the route listed below through Boston proper;

Northbound:

Route 93 (North) to Frontage Road, straight on Atlantic Avenue, straight on Cross Street, right on North Washington Street;

Southbound:

North Washington Street left on John F. Fitzgerald Expressway Surface Road, right onto Purchase Street, straight on John F. Fitzgerald Expressway Surface Road, straight on Albany Street to Route 93 (South).''

**Please Be Advised That Enforcement of the New Route Will Begin on Monday, July 3, 2006*

Since the establishment of the new hazardous material route, motor vehicles transporting regulated hazardous materials must use the newly designated streets.

In addition to the hazardous material routing designation, the Boston Regulations and Ordinance also established a permit system which requires, among other things, that carriers who wish to operate their vehicles inconsistently with the requirements of the Ordinance and/or Boston Regulations, obtain a permit for authorities beyond those restrictions. A permit would be issued only where (1) a compelling need is shown, and (2) where transportation of the hazardous materials is in the public interest. Ordinance § 2(A)(8); Boston Regulations § 8.1.3. The permit would be granted for a period of one year and would be automatically renewed upon request unless revoked for cause after a hearing. *Id.* In order for hazardous material vehicles to use City streets for transportation of regulated hazardous material where there is no point of origin or destination within the City, the motor carrier must obtain a permit for ''through'' transportation via downtown Boston.

ATA contends that prior to 2006, motor carriers were regularly issued through-permits, allowing them to transport hazardous material through downtown Boston. In April 2006, the City issued a form letter to all permit holders and applicants stating that it was undertaking a review of all permits issued pursuant to the Ordinance and Boston Regulations ''to determine if the

[7] *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991). In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. chapter 51. [Pub. L. 103–272, 108 Stat. 745].

[8] ''The purpose of this memorandum is to state the general policy of my Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.'' 74 FR at 24693.

criteria for issuing the permit continue to be met.'' [9] The letter went on to state:

> In light of various changed circumstances, both locally and nationally, that have arisen over the years after the Regulations were enacted, the Fire Commissioner and the Commission have determined that each permit and permit application now needs to be reviewed with those changed circumstances and criteria in mind.

The City cites changes and events such as the terrorist attacks of September 11, 2001, changed traffic patterns and roadways occasioned by the Big Dig project, land use changes and population density shifts within the City, and an overall increase in hazardous material transportation by motor vehicle as reasons for the reexamination of the issued permits. Each permit holder and applicant was notified of a hearing date to present evidence of the criteria for issuance and/or maintenance of the permit, *i.e.,* that there was a compelling need and that transportation of the hazardous material was in the public interest. According to the ATA and Mass Highway preemption applications, and undisputed by the City of Boston, following this 2006 reexamination of permit holders, no permits for ''through'' transportation have been issued/renewed in the past several years.

As a result of their inability to obtain through transportation permits, hazardous material motor carriers are directed to travel on alternate routes that bypass the restricted areas of downtown Boston.[10] According to ATA, the bypass route significantly increases the mileage of motor carriers with regular commercial activities involving origin and destination points immediately north and south of the City.[11] In addition, the diversion of hazardous material motor vehicles around the City causes those vehicles to travel through numerous other communities surrounding Boston.

b. Summary of Federal Statutory and Regulatory Requirements

Any State or political subdivision of a State, such as the City of Boston, must comply with Federal statutes and regulations when establishing, maintaining, enforcing or modifying a hazardous material highway routing designation. 49 U.S.C. 5125(c); 49 U.S.C. 5112(b). FMCSA promulgated regulations pursuant to 49 U.S.C. 5112(b) that States must follow when establishing or modifying a hazardous material routing designation. 49 CFR 397.69. In summary, the standards require:

— A finding by the State that the highway routing designation ''enhances public safety in the areas subject to its jurisdiction and in other areas which are directly affected by such highway routing designation.'' 49 CFR 397.71(b)(1).

— Notice to the public of the proposed routing designation, a 30-day period for the public to submit comments, and consideration of whether to hold a public hearing (with advance notice to the public). 49 CFR 397.71(b)(2).

— Notice to and consultation with ''officials of affected political subdivisions, States and Indian tribes, and any other affected parties,'' and completion of the routing designation process within 18 months of the notice to the public or notice to other affected jurisdictions. 49 CFR 397.71(b)(3), (6).

— Assurance of ''through highway routing * * * between adjacent areas'' so as not to impede or unnecessarily delay the transportation of non-radioactive hazardous material. 49 CFR 397.71(b)(4).

— A risk analysis be conducted, with a finding that the routing designation enhances public safety. 49 CFR 397.71(b)(4).

— No unreasonable burden on commerce. 49 CFR 397.71(b)(5).

— Agreement with the proposed routing by all affected States or Indian tribes within 60 days of notice, or alternatively, approval by the FMCSA Administrator pursuant to dispute resolution procedures under 49 CFR 397.75. 49 CFR 397.71(b)(5).

— Reasonable access for vehicles to reach terminals, pickup and delivery points, loading and unloading locations, and facilities for food, fuel, repairs, rest and safe havens. 49 CFR 397.71(b)(7).

— Responsibility by the States for ensuring that all of their political subdivisions comply with the federal regulations and for resolving any disputes between political subdivisions within their jurisdictions. 49 CFR 397.71(b)(8).

— Compliance by the State or Indian tribe with the public information reporting requirements in 49 CFR 397.73. 49 CFR 397.71(b)(8).

— Consideration of specific factors, including population density, type of highway, types and quantities of NRHM normally transported, emergency response capabilities, results of consultation with affected persons, exposure and other risk factors, terrain, continuity of routes, alternative routes, effects on commerce, delays in transportation, climatic conditions, and congestion and accident history. 49 CFR 397.71(b)(9).

The standards summarized above, set forth at 49 CFR 397.71, apply to all hazardous material highway routing designations established or modified on or after November 14, 1994. 49 CFR 397.69(a). Except in the case of certain dispute resolutions or waivers, any hazardous material routing designation made in violation of the applicable Federal standards is preempted. 49 CFR 397.69(b).

Any routing designation that was established prior to, and not modified after, November 14, 1994, is ''grandfathered'' under the prior Federal hazardous material transportation law. 49 CFR 397.69(c); 49 U.S.C. 5125(c)(2)(B).[12] Those earlier routing designations that fall within the ''grandfathered'' period, are subject to preemption in accordance with the standards set forth in 49 U.S.C. 5125(a) and 49 CFR 397.203(a)(1) and (a)(2). This earlier preemption standard is often referred to as the Dual Compliance/Obstacle Test. Under that standard, a routing designation is preempted if: (1) Compliance with both the hazardous material routing designation and any requirement under the HMTA or of a regulation issued therein is not possible, or (2) the highway routing designation as applied and enforced creates an obstacle to the accomplishment and execution of the HMTA or the regulations thereunder.

[9] Letter from Kevin P. MacCurtain, Acting Fire Commissioner, to various permit holders, April 7, 2006, attached to ATA's preemption application as Exhibit E.

[10] See Exhibit J to Boston's Comments, Exemplar of Massachusetts Highway Department Hazmat ''Trucker Notice'' Sign and Exhibit K to Boston's Comments, Photograph of Massachusetts Highway Department Posted Hazmat ''Trucker Notice'' Sign. Both signs state, ''I–93 BOSTON TUNNELS HAZARDOUS/DANGEROUS CARGOES PROHIBITED USE I–95 NORTH [SOUTH].''

[11] Specifically, in one example provided by ATA, motor carriers transporting petroleum products from a fuel farm in Everett, MA to points south of the City, such as Milton, MA, are required to travel an additional 84 miles roundtrip, a 382% mileage increase. According to ATA, this effectively has reduced motor carrier productivity by 33%, in light of hours of service restrictions.

[12] Title 49 U.S.C. 5125(c)(2)(B) states that ''[t]his subsection and section 5112 of this title do not require a State or Indian tribe to comply with section 5112(b)(1)(I) if the highway routing designation, limitation or requirement was established before November 16, 1990.'' Although the statutory and regulatory ''grandfather'' clause dates vary by approximately four years—November 16, 1990 versus November 14, 1994—the date differential is of no consequence in the instant preemption proceeding. The original Boston routing designations were established in 1980, while the purported modifications occurred in 2006, well beyond the timeframe of the two ''grandfather'' clauses.

c. Application of Federal Regulatory Requirements to Boston's Hazardous Material Route and Permit System

The central issue of the consolidated preemption application is whether the City of Boston was required to comply with current Federal standards regarding the establishment or modification of hazardous material highway routing designations, as contained in 49 CFR part 397, subpart C. In order to make that determination, it is necessary to decide which preemption standard is applicable to the hazardous material routing designations established or modified by the City—the standard contained in 49 CFR 397.69(a) or the earlier standard of the Dual Compliance/Obstacle Test. In this case, that analysis turns on the meaning of a ''modification'' of a routing designation, as that term is used in 49 CFR 397.69(a).[13]

It is undisputed that Boston's original hazardous material routing designation was established in 1980 pursuant to the Ordinance and Boston Regulations. As such, the preemption standard for the original route(s) would ordinarily fall within the ''grandfather'' clauses of both 49 U.S.C. 5125(c)(2) and 49 CFR 397.69(c). The pertinent question, however, is whether that original routing designation was modified subsequent to November 14, 1994, such that the modified route would be subject to the current Federal standards for hazardous material routing designations. ATA contends that two events occurred that amount to modifications of Boston's routing designations, and therefore the City was required to comply with all of the standards set forth in 49 CFR 397.71, *infra*. Those two events are (1) the change in designated streets of the hazardous material route as a result of roadway construction in conjunction with the CA/T project, and (2) the change in the administration and enforcement of the City's permit system such that through-permits are no longer issued, thereby creating a new *de facto* routing restriction which effectively bans all hazardous material transportation if the vehicle has neither a point of origin nor destination within the City of Boston.

In its comments submitted in response to the preemption applications, Boston argues that its regulations have been in existence for 29 years and have remained unchanged during that time. The City contends that the changes to the hazardous material route were adjusted to accommodate changes to physical road locations caused by the Big Dig, but that such changes did not amount to a significant or material modification of the route. Boston submits that it was taking advantage of an improved surface roadway to increase public safety in connection with the transportation of hazardous material. The City further contends that the route change was accomplished by ''administratively updating'' the City's Major Thoroughfare System and that the route change involved only an ''insignificant shift'' one roadway over within the same central corridor through downtown Boston. As such, Boston argues that this shift in roadway does not constitute a modification of a designated hazardous material route for purposes of triggering 49 CFR 397.69.

The FMCSA is not persuaded by Boston's arguments and finds that the change in roadways, evidenced by the City's own ''Notice of Hazardous Materials Route Change,'' does constitute a modification of the designated route. In order to make this change in the route, the City was required to amend its Traffic Rules and Regulations so that it could update the designation of the Major Thoroughfare System to include the new road(s). Referring to the amendment as an ''administrative update'' does not change the fact that the City was legally required to revise its regulations for the route change to take effect. And although the original route and the new route may be located in close proximity to one another, the FMCSA declines to find that a route change of only a block or two is not a modification of the route. Such a finding would immediately raise the question of how far a route could be changed before it is considered modified. The simpler and preferred approach, which allows for no confusion, is that a change from one roadway to another constitutes a modification of the route. If a hazardous materials motor carrier were to use the previous designated route on Commercial Street, that vehicle would presumably be subject to enforcement for a violation of the City's hazardous material routing designation. Given that fact, it can hardly be said that the route was not modified within the meaning of 49 CFR 397.69. As such, Boston was required to comply with current Federal regulatory standards before designating the new hazardous material route. A preemption analysis under the earlier Dual Compliance/Obstacle Test is not warranted given that the designated route was modified after November 14, 1994. The routing designation therefore must be evaluated against the requirements of 49 CFR 397.71.

ATA further submits that the change in administration of the City's permit system, which it argues has effectively banned through transportation of hazardous material within the City of Boston, also amounts to a *de facto* new routing designation that would subject the City to compliance with 49 CFR 397.69 and 397.71. Boston disputes ATA's contention that its actions with respect to its permitting program constitute a newly designated routing restriction. The City states that its 2006 review of current permit holders and new applicants was simply an exercise of enforcement of the 1980 Boston Regulations. It submits that during the course of that review and subsequently, the analysis of whether or not to issue a through-permit to an applicant is based on the same criteria established in the 1980 Boston Regulations, namely, whether the applicant has demonstrated a compelling need and that transportation of the hazardous material is in the public interest. Boston argues that it is entitled to administrative discretion and to reach its own conclusions, which may change over time, as to what constitutes ''compelling need'' and ''in the public interest.'' While it concedes that in years past the City may have been ''more permissive in granting permits,'' Boston argues its recent adoption of a more restrictive approach to permitting does not mean a change in the Boston Regulation has occurred. Boston Comments at 22–25.

Once again, we do not find Boston's arguments persuasive. The City may not circumvent its own regulations or Federal regulation by claiming to utilize a 29-year-old permitting system, yet failing to actually issue any permits. Although the City is correct that the permitting provision of the Boston Regulation did not change, that is not the relevant analysis in this instance. The real question is whether the City's highway routing designation has changed, and the answer to that question is yes. The definition of a ''routing designation'' includes ''[a]ny regulation, *limitation, restriction*, * * * [or] *routing ban* * * * applicable to the highway transportation of NRHM over a specific highway route or portion of a route.'' 49 CFR 397.65 (emphasis

[13] Title 49 CFR 397.69(a) states:

Any State or Indian tribe that establishes or *modifies* a highway routing designation over which NRHM may or may not be transported on or after November 14, 1994, and maintains or enforces such designation, shall comply with the highway routing standards set forth in § 397.71. For purposes of this subpart, any highway routing designation affecting the highway transportation of NRHM, made by a political subdivision of a State is considered as one made by that State, and all requirements of this subpart apply. (Emphasis added.)

added). The City used to allow transportation of hazardous material vehicles through the downtown corridor even where the motor carrier did not have a point of origin or destination within the City. This transportation was authorized through issuance of permits to qualified hazardous material motor carriers. Beginning at a very identifiable point in time in 2006, Boston made the decision to revoke through-permits previously issued and not to issue any new through-permits going forward. This change in the administration of the City's permitting system has created a new limitation/restriction/ban on through transportation of hazardous material vehicles and a *de facto* modification of the City's routing designation. Boston's current administration of the permitting system essentially removes the provision of the Ordinance and Boston Regulation that allows a hazardous materials motor carrier to demonstrate a compelling need for issuance of a through-permit. This *de facto* modification to the City's routing designation has a significant impact on transportation of hazardous materials through Boston. It also serves to shift the risk associated with that transportation to neighboring jurisdictions by forcing hazardous material motor carriers to use alternative routes bypassing the City of Boston. Because this modification to Boston's routing designation occurred post-November 14, 1994, the City is required to comply with Federal regulatory standards found in 49 CFR 397.71.

Both the City of Boston in its comments and Mass Highway in its preemption application raise the issue of a prior DOT Inconsistency Ruling (''IR–3''), as well as a prior U.S. District Court case [14] that addressed certain aspects of the Ordinance and 1980 Boston Regulations. In view of the fact that the federal court case dealt with a request for a preliminary injunction which does not undertake an analysis of the merits of the arguments, and the fact that the ruling on IR–3 was found to be ''indeterminate,'' neither of these prior rulings is of precedential value to FMCSA's current preemption determination. Moreover, the challenges raised in IR–3 and the federal court case related to various provisions of the original 1980 Boston Regulations and Ordinance. The issue before FMCSA in the current preemption applications is whether there has been a modification of Boston's hazardous material highway routing designations such that current Federal preemption standards apply. Given the findings above that such a modification has occurred, the prior IR–3 and federal court case have no applicability to the present determination.

As noted by ATA in its preemption application, as well as by the majority of commenters, including the Massachusetts Motor Transportation Association, Associated Industries of Massachusetts, Brewer Petroleum Service, Inc., Dangerous Goods Advisory Council, Lighter Association, Inc., Triumvirate Environmental Inc., Salvoni Transportation, Massachusetts Oilheat Council, J&S Transport Co., Inc., National Tank Truck Carriers, Inc. and Dennis K. Burke, Inc., Boston did not undertake the necessary steps to comply with the standards set forth in 49 CFR 397.71 before making modifications to the City's hazardous material routing designations. While Boston argues on the one hand that it did not have to comply with these current Federal regulatory requirements, the City argues in the alternative that it did undertake certain steps and applied an analysis similar to the requirements in section 397.71. Mass Highway and the City submit that a study conducted for purposes of analyzing alternative hazardous material routes in conjunction with construction during the CA/T project, ''largely complied with the federal regulatory requirements later outlined in § 397.71.'' [15] Mass Highway Application at 4; Boston Comments at 14. Although that study may have considered some of the same factors found in 397.71(b)(9), such as population density, type of highway, emergency response capability, etc., it failed to address other factors required under the current standards. For example, Boston did not engage in any of the other requirements of part 397.71, most notably the requirements of 397.71(b)(3), involving consultation with other affected parties, and 397.71(b)(5), requiring agreement to the routing designation by other affected States or approval by the FMCSA Administrator, in lieu of such agreement. Moreover, the study was completed in 1994 while the new routing designation was not proposed until 2006. The factors to be considered in 397.71(b)(9) are fluid conditions, such as population density, type of highway, exposure to risk factors, alternative routes, congestion and accident history, to name a few. An analysis of these factors 12 years earlier would likely not accurately reflect the current conditions and considerations.

Our finding today that the change in roadway is a modification of the designated hazardous material route, as well as our finding that a *de facto* new routing designation was created by Boston's effective ban on through-permits, further the public policy and legislative intent behind the Federal hazardous materials transportation law, which seeks to provide a uniform basis of regulations to promote the safe transportation of hazardous materials. When Boston's original routing designations were established in 1980, the current Federal regulations were not in existence. The grandfathering provisions in the Federal statute and rule excuse Boston's compliance with the Federal standards as to its 1980 routing designations. However, almost fifteen years have passed since the current regulations were enacted, and the City has had ample notice of what would be required should it wish to modify its hazardous material highway routing designations. The City could have applied for a waiver of preemption pursuant to 49 U.S.C. 5125(e) and 49 CFR 397.213, but it decided not to do so. The City of Boston chose to make the modifications discussed herein, and it must comply with the current Federal regulations.

V. Ruling

FMCSA finds that 49 U.S.C. 5125(c)(1) preempts certain highway routing requirements of the City of Boston because Boston failed to comply with FMCSA's standards for establishing or modifying a hazardous material highway routing designation issued pursuant to 49 U.S.C. 5112(b) and 49 CFR part 397, subpart C. The specific routing requirements preempted are:

1. The Traffic Rules and Regulations of the City of Boston, Article VII, section 8B, Hazardous Materials Route; and
2. The *de facto* ban on hazardous material transportation through the City of Boston due to the change in administration of the City's hazardous material permitting system.

This preemption decision will become effective on May 17, 2010 to allow time for the City of Boston to comply with the current Federal statutory and regulatory requirements.

VI. Petitions for Reconsideration and Judicial Review

In accordance with 49 CFR 397.223(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of

[14] *American Trucking Assoc., Inc., et al.* v. *Boston*, 1981 U.S. Dist. LEXIS 18423 (D. Mass. 1981).

[15] The study was entitled ''June 1994 CA/T Project Concept Report No. 2AB26, Transportation of Hazardous Cargo,'' and can be found as Exhibit H to Mass Highway's preemption application.

service of this decision. The decision will become the final decision of FMCSA 20 days after service if no petition for reconsideration is filed within that time. If a petition for reconsideration of this decision is filed within 20 days, the action by FMCSA on the petition for reconsideration will be the final decision. 49 CFR 397.223(d).

Persons adversely affected or aggrieved by this determination may seek judicial review, in accordance with 49 U.S.C. 5127(a), in the United States Court of Appeals for the District of Columbia Circuit or in the Court of Appeals for the circuit in which the person resides or has its principal place of business. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5127.

Issued on: November 10, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–27483 Filed 11–13–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: December 10, 2009, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free number and pass code needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: November 10, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–27565 Filed 11–12–09; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption from the Federal Motor Vehicle Motor Theft Prevention Standard; Jaguar Land Rover

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Jaguar Land Rover North America's, (Jaguar) petition for an exemption of the XJ vehicle line in accordance with 49 CFR Part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the anti-theft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, W43–439, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated May 11, 2009, Jaguar requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the XJ vehicle line beginning with MY 2010. The petition has been filed pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an anti-theft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Jaguar provided a detailed description and diagram of the identity, design, and location of the components of the anti-theft device for the XJ vehicle line. Jaguar stated that the XJ vehicles will be equipped with a passive, transponder based, electronic engine immobilizer device as standard equipment beginning with the 2010 model year. Additionally, Jaguar states that its vehicle security system also includes an audible and visual perimeter alarm system as standard equipment and can be armed with the Smart Key or programmed to be passively armed. The perimeter alarm system can be programmed to arm automatically 30 seconds after all doors, luggage compartment and hood apertures are closed and the Smart Key is removed from the vehicle. The siren will sound and exterior lights will flash if the hood, luggage compartment, or doors are open during unauthorization.

Jaguar stated that there are three methods to its system operation, one method of operation consist of the driver approaching the vehicle and pulling on the driver's door handle, when the door handle is pulled, the Keyless Vehicle Module via the Low frequency Door Handle Antenna sends a signal to the Key Fob by using a resonant frequency of 125 KHz. The Key fob will decrypt the data received along with its unique identifier and send an answer back to the Keyless Vehicle Module via the Remote Frequency Receiver. On pressing the ignition start button, a search is commenced in order to find and authenticate the Smart Key within the vehicle interior. If successful, this information is passed via a coded data transfer to the Body Control Module (BCM) via the Remote Function Actuator. The BCM in turn, will pass the valid key status to the instrument cluster, via a coded data transfer. The BCM sends the key valid message to the Power Train Control Module which initiates a coded data transfer, then the engine is authorized to crank, fuel and start. The second method is by using the Smart Key unlock button, upon pressing the button, the doors will unlock, once the driver presses the ignition start button, the operation is the same as method one. The third method is if the Smart Key has a discharged battery or is damaged, there is an emergency key blade that can be removed from the Smart Key and used to unlock the doors. On pressing the ignition start button, a search is commenced in order to find and authenticate the Smart Key within the vehicle interior, if successful, the Smart Key needs to be docked. Once the Smart Key is placed in the correct position, and the ignition start button is pressed again, the BCM and Smart key enter a coded data exchange via the Immobilizer Antenna Unit, the BCM in turn, passes the valid key status to the instrument cluster, via a coded data transfer. The BCM sends the key valid message to the Power Train Control Module which initiates a coded data transfer, if successful the engine is authorized to crank, fuel and start.

In addressing the specific content requirements of 543.6, Jaguar provided information on the reliability and

durability of its proposed device. To ensure reliability and durability of the device, Jaguar conducted tests based on its own specified standards. Jaguar provided a detailed list of the tests conducted (i.e., temperature and humidity cycling, high and low temperature cycling, mechanical shock, random vibration, thermal stress/shock tests, material resistance tests, dry heat, dust and fluid ingress tests). Jaguar stated that it believes that its device is reliable and durable because it complied with specified requirements for each test. Additionally, Jaguar stated that the key recognition sequence includes in excess of a billion code combinations. The code combinations include encrypted data that are secure against copying, also the coded data transfer between modules use a unique secure identifier, random number and secure public algorithm which includes an excess of a billion code combinations.

Jaguar stated that the current generation Jaguar XJ line produced since 2004 MY has an engine immobilizer system as standard equipment, but since the current generation of Jaguar XJ has only been available with an engine immobilizer, there is no comparative Jaguar data available for the XJ without an immobilizer. Also, Jaguar stated that based on MY 2006 theft information published by NHTSA, the Jaguar XJ line has had theft rates well below the median of 2.08 thefts per thousands, specifically, for the XJ8/XJ8L vehicle line,0.8711, the Vanden Plas/Super V8, 0.000, and the XJR, 0.0000. Jaguar believes this low theft rate demonstrates the effectiveness of the immobilizer system.

Based on the evidence submitted by Jaguar, the agency believes that the anti-theft device for the XJ vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment anti-theft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Jaguar has provided adequate reasons for its belief that the anti-theft device for the Jaguar XJ vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Jaguar provided about its device.

The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation; attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Jaguar's petition for exemption for the Jaguar XJ vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the anti-theft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Jaguar decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Jaguar wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an anti-theft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an anti-theft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: November 6, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–27361 Filed 11–13–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Fuji Heavy Industries U.S.A., Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Fuji Heavy Industries U.S.A., Inc.'s (FUSA) petition for exemption of the Subaru Legacy vehicle line in accordance with 49 CFR part 543, *Exemption From the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Standards, NHTSA, W43–439, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated September 22, 2009, FUSA requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Subaru Legacy vehicle line, beginning with the 2011 model year. The petition has been filed pursuant to 49 CFR part 543, *Exemption From Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one vehicle line per model year. In its petition, FUSA provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Legacy vehicle line. FUSA stated that all Subaru Legacy vehicles will be equipped with a passive, transponder-based electronic immobilizer device as standard equipment. FUSA stated that the antitheft system and the immobilization features are designed and constructed within the vehicle's Controller Area Network electrical architecture. Major components of the antitheft device will include an electronic key, a passive immobilizer system, a key ring antenna and an engine control unit. System immobilization is automatically activated when the key is removed from the vehicle's ignition switch, or after 30 seconds if the ignition is simply moved to the off position and the key is not removed. The device will also have a visible and audible alarm, and panic mode feature. The alarm system will monitor door status and key identification. Unauthorized opening of a door will activate the alarm system causing sounding of the horn and flashing of the hazard lamps. FUSA's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

In addressing the specific content requirements of 543.6, FUSA provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, FUSA conducted tests based on its own specified standards and provided a list of information of the tests it conducted. FUSA believes that its device is reliable and durable because the device complied with its own specific requirements for each test. Additionally, FUSA stated that the immobilization features are designed and constructed within the vehicle's overall Controller Area Network Electrical Architecture. Therefore, the antitheft system cannot be separated and controlled independently of this network.

FUSA stated that it believes that historically, NHTSA has seen a decreasing theft rate trend when electronic immobilization has been added to alarm systems. FUSA stated that it presently has immobilizer systems on all of its product lines (Forester, Tribeca, Impreza, Legacy, and Outback models) and it believes the data shows immobilization has had a demonstrable effect in lowering its theft rates. FUSA also noted that recent state-by-state theft results from the National Insurance Crime Bureau reported that in only 5 of the 50 states listed in its results, did any Subaru vehicle appear in the top 10 list of stolen cars. Review of the theft rates published by the agency through MY/CY also revealed that, while there is some variation, the theft rates for Subaru vehicles have on average, remained below the median theft rate of 3.5826.

FUSA also provided a comparative table showing how its device is similar to other manufacturer's devices that have already been granted an exemption by NHTSA. In its comparison, FUSA makes note of Federal Notices published by NHTSA in which manufacturers have stated that they have seen reductions in theft due to the immobilization systems being used. Specifically, FUSA notes claims by Ford Motor Company that its 1997 Mustangs with immobilizers saw a 70% reduction in theft compared to its 1995 Mustangs without immobilizers. FUSA also noted its reliance on theft rates published by the agency which showed that theft rates were lower for Jeep Grand Cherokee immobilizer-equipped vehicles (model year 1995 through 1998) compared to older parts-marked Jeep Grand Cherokee vehicles (model year 1990 and 1991). FUSA stated that it believes that these comparisons show that its device is no less effective than those installed on lines for which the agency has already granted full exemption from the parts-marking requirements. The agency agrees that the device is substantially similar to devices in other vehicles lines for which the agency has already granted exemptions.

Based on the evidence submitted by FUSA, the agency believes that the antitheft device for the Legacy vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for an exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that FUSA has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information FUSA provided about its device.

The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full FUSA's petition for exemption for the vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If FUSA decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if FUSA wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any

changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: November 6, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–27360 Filed 11–13–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 10, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before December 16, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1593.

Type of Review: Extension.

Title: U.S. Income Tax Return for Qualified Funeral Trusts.

Form: 1041–QFT.

Description: IRC section 685 allows the trustee of a qualified funeral trust to elect to report and pay the tax for the trust. Data is used to determine that the trustee filed the proper return and paid the correct tax.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 270,150 hours.

OMB Number: 1545–0130.

Type of Review: Revision.

Title: U.S. Income Tax Return for an S Corporation.

Form: 1120S, Schedule D (Form 1120S), Schedule K–1 (Form 1120S), and Schedule M–3 (Form 1120S).

Description: Form 1120S, Schedule D (Form 1120S), Schedule K–1 (Form 1120S), and Schedule M–3 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. IRS uses the information to determine the correct tax for the S corporation and its shareholders.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 420,945,980 hours.

OMB Number: 1545–0192.

Type of Review: Revision.

Title: Tax on Accumulation Distribution of Trusts.

Form: 4970.

Description: Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.

Respondents: Individuals or households.

Estimated Total Burden Hours: 42,900 hours.

OMB Number: 1545–0935.

Type of Review: Revision.

Title: U.S. Income Tax Return of a Foreign Sales Corporations; Schedule P, Transfer Price or Commission.

Form: 1120–FSC, Schedule P (Form 1120–FSC).

Description: Form 1120–FSC is filed by foreign corporations that have elected to be FSCs or small FSCs. The FSC uses Form 1120–FSC to report income and expenses and to figure its tax liability. IRS uses Form 1120–FSC and Schedule P (Form 1120–FSC) to determine whether the FSC has correctly reported its income and expenses and figured its tax liability correctly.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,088,250 hours.

OMB Number: 1545–0956.

Type of Review: Revision.

Title: Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

Form: 5500–EZ.

Description: Form 5500–EZ is an annual return filed by a one-participant or one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 7,005,000 hours.

OMB Number: 1545–1359.

Type of Review: Extension.

Title: Information Reporting by Passport and Permanent Residence Applicants INTL–978–86 (NPRM).

Description: The regulation requires applicants for passports and permanent residence status to report certain tax information on the applications. The regulations are intended to give the Service notice of non-filers and of persons with foreign source income not subject to normal withholding, and to notify such persons of their duty to file U.S. tax returns.

Respondents: Individuals or households.

Estimated Total Burden Hours: 750,000 hours.

OMB Number: 1545–1432.

Type of Review: Extension.

Title: Voluntary Customer Surveys to Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions.

Description: This is a generic clearance for an undefined number of customer satisfaction and opinion surveys and focus group interviews to be conducted over the next three years. Surveys and focus groups conducted under the generic clearance are used by the Internal Revenue Service to determine levels of customer satisfaction as well as determining issues that contribute to customer burden. This information will be used to make quality improvements to products and services.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 150,000 hours.

OMB Number: 1545–1964.

Type of Review: Revision.

Title: Intake/Interview & Quality Review Sheet.

Form: 13614–C, 13614–C (SP).

Description: The SPEC function developed the Form 13614–C, Intake/Interview & Quality Review Sheet that contains a standardized list of required intake and quality review questions to guide volunteers in asking taxpayers basic questions about themselves and conducting a quality review of the completed return. The intake/interview and quality review sheet is an effective tool for ensuring critical taxpayer information is obtained and applied during the interview and completion of the tax return process.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 562,583 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue

Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–27446 Filed 11–13–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Financial Stability within the Department of the Treasury is soliciting comments concerning the service application for the Making Home Affordable Participants.

DATES: Written comments should be received on or before January 15, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of the Treasury, Bruce Turner, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed as above.

SUPPLEMENTARY INFORMATION:

Title: TARP—Making Home Affordable Participants.

OMB Number: 1505–0216.

Abstract: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Pub. L. 110–343), the Department of the Treasury has implemented several aspects of the Troubled Asset Relief Program. Among these components is a voluntary foreclosure prevention program—Making Home Affordable (MHA) program, under which the Department will use TARP capital to lower the mortgage payments of qualifying borrowers. The Treasury will do this through agreements with mortgage servicers to modify loans on their systems. All servicers are eligible to participate in the program. The information will be used to set the servicers up on the data system, ensure that the servicers can be paid for the loan modifications that they undertake, check for compliance, and report out on the effectiveness of the program.

Current Actions: Continuation of application.

Type of Review: Extension.

Affected Public: Financial Institutions.

Estimated Number of Respondents: 130.

Estimated Total Annual Burden Hours: 5,985 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 9, 2009.

Daniel Abramowitz,

Office of Financial Stability PRA Program Officer.

[FR Doc. E9–27484 Filed 11–13–09; 8:45 am]

BILLING CODE 4810–25–P

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Federal Register

Vol. 74, No. 219

Monday, November 16, 2009

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Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
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Electronic and on-line services (voice)	**741–6020**
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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

56521–56692 2
56693–57056 3
57057–57238 4
57239–57400 5
57401–57558 6
57559–57882 9
57883–58188 10
58189–58532 12
58533–58842 13
58843–59032 16

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

382 58189

3 CFR

Proclamations:
8444 57225
8445 57227
8446 57229
8447 57231
8448 57233
8449 57235
8450 57237
8451 58529
8452 58531

Executive Orders:
13183 (amended by 13517) 57239
13462 (amended by 13516) 57241
13494 (amended by 13517) 57239
13516 .....56521, 57241
13517 57239
13518 58533

Administrative Orders:
Memorandums:
Memo. of Nov. 5, 2009 57881
Notices:
Notice of Nov. 6, 2009 58187
Notice of November 12, 2009 58841

5 CFR

Proposed Rules:
731 56747
1604 57125
1651 57125
1653 57125
1690 57125

7 CFR

11 57401
301 57243
319 56523
354 57057
966 57057
983 .....56526, 565231
984 56693
987 56697
1710 56542

Proposed Rules:
920 58216
1710 56569

9 CFR

78 57245

10 CFR

Proposed Rules:
430 .....56928, 58915
431 57738

12 CFR

229 58537

13 CFR

126 56699

14 CFR

23 57060
25 .....56702, 56706
39 .....56710, 56713, 56717, 57402, 57405, 57408, 57411, 57559, 57561, 57564, 57567, 57571, 57574, 57577, 57578, 58191, 58195, 58539
71 57246
97 .....58200, 58202

Proposed Rules:
1 58918
23 58918
39 .....56748, 57264, 57266, 57268, 57271, 57273, 57277, 58919
71 .....57616, 57617, 57618, 57620, 57621, 58569, 58570, 58571, 58573

15 CFR

744 57061
774 57581

Proposed Rules:
922 58923

16 CFR

Proposed Rules:
305 57950

17 CFR

4 57585
211 57062
248 58204

18 CFR

375 57246

19 CFR

Proposed Rules:
113 57125
191 57125

20 CFR

1910 57883

Proposed Rules:
404 .....57970, 57971, 57972

21 CFR

73 .....57248, 58843
528 58205

Proposed Rules:
4 57973

26 CFR

1 .....57251, 57252

602 57252
Proposed Rules:
1 58574
53 58574

28 CFR

2 58540

29 CFR

4022 58544
Proposed Rules:
1202 ....56750, 57427
1206 ....56750, 57427
1910 ....57278, 57976
1915 57278
1926 57278

31 CFR

285 56719
501 57593
Proposed Rules:
103 58926

32 CFR

239 58846
311 58205
806b 57414
Proposed Rules:
806b 57427

33 CFR

117 ....57884, 58209, 58210
165 ....57070, 57415, 57886, 57888, 58211, 58545
334 ....58846, 58848
Proposed Rules:
117 ....57975, 58931, 58933
161 58223
165 ....57427, 58223

34 CFR

Ch. 2 58436

38 CFR

3 ....57072, 58232
200 57608

39 CFR

20 57890
111 57899
3001 57252
3004 57252
3020 56544
Proposed Rules:
3050 57280

40 CFR

51 56721
52 ....56721, 57048, 57051, 57074, 57612, 57904, 57907, 58553
81 58687
112 58783
141 57908
180 ....57076, 57078, 57081
261 57418
300 ....57085, 58554
721 57424
Proposed Rules:
51 57126
52 ....56754, 57049, 57055, 57126, 57622, 57978
60 58574
61 58574
63 58574
70 57126
71 57126
300 58575
721 57430
1515 58576

42 CFR

34 56547
52 57918
409 58078
424 58078
484 58078
Proposed Rules:
410 57127
413 57127
414 57127

44 CFR

65 57921
67 ....57923, 57928, 57944
206 58849
Proposed Rules:
67 57979

45 CFR

82 58189

46 CFR

Proposed Rules:
540 56756

47 CFR

2 57092
25 57092
73 ....56726, 56727, 57103, 57104, 57260, 58851
Proposed Rules:
36 57982
54 57982
73 ....57281, 57282, 57283, 58936

48 CFR

3009 58851
3052 58851
Proposed Rules:
3 58584
52 58584

49 CFR

234 58560
564 58213
571 ....58213, 58562
Proposed Rules:
234 58589
571 57623
633 57986

50 CFR

17 56978
20 57615
229 58859
300 57105
622 ....57261, 58902
648 ....56562, 58567
660 ....57117, 57425
679 ....56728, 56734, 57262, 57949
Proposed Rules:
17 ....56757, 56770, 57804, 57987
223 57436
224 57436
635 57128
648 ....57134, 58234

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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S. 475/P.L. 111–97
Military Spouses Residency Relief Act (Nov. 11, 2009; 123 Stat. 3007)

S. 509/P.L. 111–98
To authorize a major medical facility project at the Department of Veterans Affairs Medical Center, Walla Walla, Washington, and for other purposes. (Nov. 11, 2009; 123 Stat. 3010)

Last List November 10, 2009

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